Pay Equity:

A New Approach to a Fundamental Right

Pay Equity Task Force
Final Report
2004

Canada

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X

Review of section 11 of the *Canadian Human Rights Act* and the *Equal Wages Guidelines, 1986*

Pay Equity Task Force Members

Beth Bilson, Q.C, Chair

Beth Bilson has degrees in law and history from the University of Saskatchewan, and a doctoral degree in law from the University of London. She has been a member of the faculty of the College of Law at the University of Saskatchewan since 1979, teaching and writing in the areas of torts, labour and administrative law, and legal history. She served as Senior Grievance Officer of the University of Saskatchewan Faculty Association from 1982 to 1985, as Assistant Vice-President (Administration) for the University from 1986 to 1988, with special responsibility for faculty collective bargaining, and as Dean of the College of Law from 1999 to 2002. From 1992 to 1997 she chaired the Saskatchewan Labour Relations Board. In addition to acting as a labour arbitrator in Saskatchewan, she is a part-time member of the Public Service Staff Relations Board and the Yukon Public Service Staff Relations Board, and Deputy Chair of the Discipline Committee of the College of Physicians and Surgeons of Saskatchewan. She was awarded the designation of Queen's Counsel for Saskatchewan in January of 2000.

Professor Marie-Thérèse Chicha

Marie-Thérèse Chicha (Ph.D in Economics, McGill University) is a professor at the School of Industrial Relations, University of Montreal. She is a member of the Immigration and Metropolis: Montréal Centre for Inter-university Research on Immigration, Integration and Urban Dynamics. As a specialist on the issues of pay equity, employment equity and the management of ethnocultural diversity, she has written several books and articles, in particular: "La gestion de la diversité: l'étroite interdépendance de l'équité et de l'efficacité," *Effectifs* (March 2002); "L'adoption et la mise en œuvre de la Loi québécoise sur l'équité salariale: l'existence d'un double standard," *Lien social et Politiques* (Spring 2002); "Les politiques d'égalité professionnelle et salariale au Québec: l'ambiguité du rôle de l'État québécois," *Recherches féministes* (2001); *L'équité salariale: mise en oeuvre et enjeux*, (2000); "The Impact of Labour Market Transformations on the Effectiveness of Laws Promoting Workplace Gender Equality," in Richard Chaykowski and Lisa M. Powell (Eds.), *Women and Work*, (1999); "La Loi sur l'équité salariale: une démarche complexe à plusieurs volet," *Gestion* (Spring 1998).

Under the auspices of the School of Industrial Relations at the University of Montreal and the Ordre des Conseillers en ressources humaines et en relations industrielles du Québec, she has presented training seminars on pay equity to various stakeholders: employers, unions, legal counsels. In 1995, upon the request of the Government of Quebec, she chaired a committee of experts whose recommendations served as the basis for Quebec's *Pay Equity Act*. She has also acted as an expert witness for the Quebec Human Rights Tribunal and the House of Common's Standing Committee on Human Rights and the Status of Disabled Persons. Finally, during the past three years, she has provided expertise in pay equity at the request of a number of governments: France, Belgium, Denmark, Sweden and Portugal. In her work with the Immigration and Metropolis Centre, Marie-Thérèse Chicha has conducted research on systemic discrimination in employment towards invisible minority youth and on employment equity programs targeted at visible minorities.

Mr. Scott MacCrimmon, B.A, MBA, CHRP

Mr. MacCrimmon has over 25 years experience specializing in human resource and compensation management. Prior to founding his own consulting firm in 1993, MacCrimmon and Associates, he worked for Peat Marwick Stevenson & Kellogg (later called KPMG) for 15 years. From 1988 to 1993 he was Principal, responsible for all compensation consulting services of the firm, first in the Toronto and then the Ottawa office. Over a three-year period he served as Director of Human Resources for the Canadian arm of a major defense industry supplier. Prior to consulting, he worked for 3 1/2 years with Bell Canada.

As a consultant, Mr. MacCrimmon has worked with hundreds of employers to design and implement equitable pay systems. Many of his projects involved job evaluation and pay equity analysis for organizations in both the public and private sectors, particularly in Ontario, Quebec and Nova Scotia. In the federal sector he has advised several Crown corporations, agencies and departments on compensation and job evaluation.

Mr. MacCrimmon is a full member of the Canadian Association of Management Consultants, holding the CMC designation. He holds a BA in Economics from the University of Western Ontario and an MBA from York University. He is a member of the Human Resources Professionals Association of Ontario (HRPAO) and holds the CHRP designation. He has lectured on human resources and compensation administration at the University of Ottawa. He is an active member of the Canadian Compensation Association and past President of the Ottawa Chapter of HRPAO.

Note from the Chair

It is evident to anyone who has experience with pay equity that this is a subject which raises complex issues with implications for human rights, for the administration of public programs and policies, for human resource management and for labour relations.

In addressing this array of issues, the Task Force has been fortunate to be able to call on the expertise of Professor Marie-Thérèse Chicha of the University of Montréal. The knowledge of Professor Chicha, based on the extensive research she has done in this area, and, in particular, her insight into the evolution of pay equity legislation in Quebec, have made an important contribution to the final report.

The Task Force has also benefited from the practical perspective provided by Mr. Scott MacCrimmon, who has had many years of experience as a consultant on pay equity matters. His consulting practice has made him familiar with many of the issues arising from the implementation of pay equity legislation in Ontario, and the application of section 11 of the *Canadian Human Rights Act* in the federal sphere.

Acknowledgements

Though the members of the Task Force take responsibility for all of the opinions expressed in this report, we could not have written this document without the assistance of the many people who provided guidance and advice as we proceeded.

We must first recognize the enormous contribution made by representatives of stakeholder groups—employers, trade unions and equality-seeking organizations—who participated in roundtable discussions and other forms of consultation with us. They generously shared their time and their views, and provided us with thoughtful written submissions for our consideration.

We are also grateful to others who took part in our consultation process, both at the public hearings we held in various parts of the country, and in briefing sessions with us. At the public hearings, individuals as well as representatives of organizations provided us with new perspectives on pay equity issues. We were also able to meet with officials from federal and provincial agencies and departments which have responsibility for administering pay equity legislation, and their insights have been very important in helping us reach our conclusions.

We were pleased to be able to commission research on a wide range of topics, and we would like to acknowledge the work of the experts and academics who undertook this research. The results of the research have provided us with significant assistance in examining a number of issues.

Finally, we would like to recognize the staff of the Pay Equity Task Force Secretariat, who provided us with effective administrative support, information and practical assistance.

Introduction

Background and Terms of Reference

In 1967, the Government of Canada appointed a Royal Commission on the Status of Women with a mandate to "inquire into the status [...] of women in Canada...to ensure for women equal opportunities with men in all aspects of Canadian society." The establishment of the Commission, chaired by respected journalist Florence Bird, was initially greeted with derision.[1] The report of the Commission, tabled in 1970, contained recommendations addressing a wide range of issues, and included a recommendation for legislative change to address the issue of equal work for equal value. Though many of the recommendations, including this one, continued to be controversial, and stimulated extensive and lively debate, the report constituted an important milestone in placing the status of women before governments and the Canadian public in a substantive way.

The recommendation of the Royal Commission that the Government of Canada enact legislation entitling women to equal pay with men performing work of equal value led ultimately to the inclusion in the *Canadian Human Rights Act*[2] of a provision specifying the right of equal pay for work of equal value for women workers falling under federal jurisdiction. As with other rights articulated in the *Canadian Human Rights Act*, the process for vindicating the right was for an aggrieved person to file a complaint with the Canadian Human Rights Commission, which, if not settled in the course of the investigation or by the Commission's efforts at resolution, could ultimately be adjudicated by the Canadian Human Rights Tribunal.

The quarter century following the passage of the *Canadian Human Rights Act* was a period in which there were enormous changes in the understanding of human rights and in views about the legislative and administrative framework required to bring about a higher degree of equity in Canadian social, political and economic institutions. The experience of those most closely involved in the process for implementing human rights principles—lawyers, judges, advocates for equality-seeking organizations, members of disadvantaged groups—led to a more refined articulation and elaboration of human rights concepts, and to a critique of the existing administrative and judicial processes for the furthering of human rights. The passage of the *Canadian Charter of Rights and Freedoms* in 1981, which, in section 15, explicitly stated the equality of all citizens as an underlying principle of Canadian society, only served to enhance the standing of human rights as a concern for all Canadians.

The experience of employers, employees and their representatives, and equality-seeking groups with the interpretation and application of section 11 of the *Canadian Human Rights Act* must be understood in this context. Although this provision was relied on as the basis for a number of efforts by employees and their representatives to make progress towards the equity in pay promised by section 11, they, along with employers, equality-seeking groups and critical observers, emerged from these experiences with strong reservations about the usefulness of the legislation in this form, and the efficacy of the system supporting the statutory provisions.

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[1] Christina Newman. "What's so funny about the Royal Commission on the Status of Women?" *Saturday Night*, January 1969, pp. 21-24.

[2] Canada. *Canadian Human Rights Act*. S.C. 1976-77 c. 33, s. 11.

On October 29, 1999, as a result of representations made by many of these participants, the Government of Canada announced its intention to conduct a review of section 11 "with a view to ensuring clarity in the way pay equity is implemented in the modern workplace."[3] Under the auspices of the Minister of Justice and the Minister of Labour, an independent Pay Equity Task Force was appointed with a broad mandate to review the legislation.

Prior to the formal appointment of the Task Force, the Chair was asked to undertake a series of discussions with a number of significant stakeholders—federal employers, employee organizations and women's groups—to discuss the nature of the mandate for the review. As a result of these "Phase 1" discussions, which took place in December of 2000, the Terms of Reference for the Task Force were finalized.

In brief, the Terms of Reference for the Task Force[4] asked us to:

- survey and analyse pay equity legislation in Canadian and international jurisdictions; examine administrative best practices and models for the implementation of pay equity legislation;
- consider the experience of individuals and organizations who have been involved in processes which are designed to move towards equal pay;
- take into account the implications of pay equity legislation and the frameworks for the achievement of pay equity for related legislative provisions, administrative structures and institutions like collective bargaining;
- assess job evaluation and wage adjustment methodologies; and
- develop options and recommendations for improving the pay equity legislative framework.

Our Process

The Terms of Reference describe the basic objective of the Task Force as being "to conduct a comprehensive review of the current equal pay provisions of the *Canadian Human Rights Act*, (s. 11) as well as the *Equal Wages Guidelines, 1986*." A review of the Terms of Reference will confirm that we have been encouraged to consider the full range of issues bearing on the question of whether section 11 in its current form, and the system which has developed for its interpretation and application—including the *Equal Wages Guidelines, 1986*—has provided effective statutory support for the achievement of pay equity for workers under federal jurisdiction, or whether some improvement might be possible to this legislative regime.

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[3] See Terms of Reference, Task Force website at www.payequityreview.gc.ca

[4] Attached to this report as Appendix B – Terms of Reference.

Consultations

In carrying out our task, we have, as the Terms of Reference suggest, engaged in consultations with a wide range of groups and individuals, with a view to understanding as broad a spectrum of views as possible, and drawing on the rich experience of stakeholders, equality-seeking organizations, consultants and members of administrative agencies who have played a role in the implementation of legislation both in the federal jurisdiction and at the provincial level.

In preparation for the process, we developed a consultation strategy document, outlining the range of consultative mechanisms we proposed to make available, and a discussion paper, setting out the issues which we regarded as relevant to our mandate.[5] We shared these documents with stakeholders and invited them to comment on the drafts, which were revised prior to their publication. The documents were subsequently posted on the Pay Equity Task Force website[6] and also circulated to a lengthy mailing list of employers, employee organizations, academic institutions and individual scholars, equality-seeking groups, human rights agencies and government officials.

Our report reflects a process which we designed to be open, transparent and accessible. To support this objective, our website was updated frequently to provide stakeholders and the public at large with current information about our work, and to permit them to review and respond to the submissions which were made in the course of the consultations. We also provided some financial support to individuals and groups whose resources would not otherwise have permitted them to participate.

Public Hearings

In April and May of 2002, the Task Force conducted public hearings in a number of centres across Canada.[7] In addition to notices on the website and through the mailing list, these hearings were advertised in daily newspapers in the centres where the sessions were to be held, and, in some cases, in large centres nearby where hearings were not scheduled to take place. During the hearings, presentations were made by trade unions, employers, community organizations, individual employees, consultants, administrative agencies and members of the public.

Roundtables

At the time of the Phase 1 consultations at the end of 2000, all of the stakeholders urged the Task Force to create opportunities during the consultation process for an exchange of views among the stakeholder groups, in addition to the anticipated meetings with specific parties. This request was accommodated in a series of roundtable discussions which took place in Ottawa in April, September and October, 2002. Representatives of federal employers, trade unions representing workers in the federal jurisdiction and women's groups were invited to these sessions, each of which was focused on a particular theme. The first of the roundtables was devoted to a discussion of the experience of these parties with the existing federal legislation; subsequent discussions dealt with various general models for pay equity legislation, with techniques and processes for the implementation of pay equity, and with the implications of pay equity for collective bargaining relationships.

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[5] Pay Equity Task Force. (2002). "Review of Section 11 of the *Canadian Human Rights Act* and the *Equal Wages Guidelines, 1986.*" Discussion paper prepared for the Pay Equity Task Force.

[6] Pay Equity Task Force website. www.payequityreview.gc.ca

[7] Vancouver, Edmonton, Yellowknife, Toronto, Ottawa, Montreal and Halifax.

Though representatives of two influential women's organizations—the National Action Committee on the Status of Women, and the National Association of Women and the Law—attended the first of these, they expressed an interest in having a roundtable which would permit representatives of a wider range of women's groups to express their views to each other and to the Task Force. A roundtable for women's groups was held in Ottawa in October 2002. Part of this roundtable was dedicated to a discussion of the issues among these groups themselves, and to the preparation of presentations which were made to the members of the Task Force later in the day.

Private Meetings

In addition to the public hearings and the roundtables, the Task Force held a number of private meetings with representatives of federal employers, employee organizations, consulting firms, and federal and provincial agencies administering pay equity or related legislation.

The Pay Equity Task Force received a considerable number of written submissions. Many of these were from parties who took part in the roundtables or in other meetings with the Task Force. A number, however, were from interested members of the public or groups wishing to comment generally on pay equity legislation or on specific aspects of such legislation or its application. A submission by Professor Paul Weiler[8] was presented as an adjunct to a presentation by the Federally Regulated Employers—Transportation and Communications (FETCO)[9] at a meeting with the Task Force; FETCO also invited Professor Mark Killingsworth[10] to make a submission in connection with his participation in the October 2002 roundtable discussion of collective bargaining issues. All written submissions were, with the permission of the authors, posted on the website, and in some cases, they elicited written responses from readers of that site.

Funding was available to support the formulation of submissions by groups who might not otherwise have been able to participate in the consultation process. This funding was allocated after review of applications, according to criteria of financial need, as well as relevance of the proposed submission to the mandate of the Task Force.

Research

The other major focus of the activities of the Task Force in preparation for writing this report was the research program. Task Force members and staff formulated a research agenda which covered the issues suggested by the Terms of Reference as necessary to a comprehensive review. Stakeholders were invited to comment on the research agenda, and these comments assisted us to put the document into its final form.

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[8] Paul Weiler. (2002). Presentation to the Pay Equity Task Force, June 28, 2002.

[9] Federally Regulated Employers – Transportation and Communications (FETCO) is an organization consisting of 23 employers and employer associations in the transportation and communications sectors coming under federal labour jurisdiction.

[10] Mark Killingsworth. (2003). *Reforming Equal Pay for Work of Equal Value*. Submission to the Pay Equity Task Force, February 2003.

Proposals were invited for research projects which would address the issues enumerated in the research agenda, and a review process was put in place to ensure that the projects which were commissioned would be of a high quality and would cover as wide a range of relevant issues as possible. Where the response to the initial call for proposals did not elicit proposals for research which would address important issues, further efforts were made to identify scholars or experts whose expertise would equip them to undertake research on a particular topic; those identified in this way were invited to submit proposals, which were subjected to review according to the criteria established at the beginning of the review process.

The Task Force ultimately commissioned 28 external research projects, as well as six case studies. With limited exceptions, the commissioned research addressed all of the issues set out in the research agenda. The range of research which was done included theoretical and conceptual projects, empirical studies, and studies which drew on experiences with pay equity planning and implementation.

Under the *Official Languages Act*,[11] the papers provided to the Task Force as part of the research program cannot be publicly circulated until they are available in both official languages. Although the translation of this extensive body of research will take some time, the results of the research program carried out by the Task Force will ultimately be an important resource for researchers, consultants and those involved in the formulation and implementation of pay equity plans. In some instances, the research breaks new ground in examining particular aspects of pay equity; in others, the research draws on experience or new conceptualizations to provide a fresh perspective on topics which had previously been examined.

The research staff of the Task Force provided members with information and statistical data on a wide variety of topics. These included the legislative initiatives and strategies which have been adopted in furtherance of the goal of pay equity in Canadian jurisdictions and elsewhere, notably in European countries and the United States. They also compiled information about government or corporate strategies and programs which might be complementary to pay equity as a means for advancing the equality of women.

Symposium

As a culminating event for both the consultation and research programs, the Task Force held a two-day symposium in Ottawa, in January 2003. Scholars and experts who had carried out the research projects summarized their findings, and there were opportunities for dialogue and debate with stakeholders and other interested parties.

The research program and consultations carried out by the Task Force were designed to provide us with information about the wide range of issues which are relevant to a review of pay equity legislation, to give us an insight into the views and perspectives of those who are affected by such legislation, and to permit us to consider the largest possible number of options as we formulate recommendations for a statutory regime which is fair and effective.

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[11] Canada. *Official Languages Act*. R.S.C. 1985, c. 31.

As we prepared to deliberate about what kind of pay equity legislation would support and advance equality for women working in the federal jurisdiction, we heard from individual employees, employers and employer organizations, employee organizations, equality-seeking groups, officials in government departments, consultants and human resources professionals, members of tribunals, and academics. We attempted to create as many opportunities as possible for those who have been affected by pay equity systems or who have studied them to share with us their experiences and their expert insights.

The opinions which were expressed to us, and the recommendations which were made with respect to how we should approach our task, diverged in many important respects. Given the different experiences and orientations of those we consulted, this is not surprising.

Common Ground

We were able, however, to identify much common ground in these discussions, and to begin to sketch a conceptual framework for legislation which would allow federally-regulated employers and their employees to take more effectual steps towards achieving pay equity. It was encouraging to us that those who must breathe life into any new legislative regime by formulating and implementing pay equity plans, were able to come to general agreement on some significant points. Though not all of these points were explicitly dealt with in the research commissioned by the Task Force, it is interesting to note that there is reinforcement for many of the views expressed by those we consulted in that research.

In other sections of this report, we will be examining in detail the issues which must, in our view, be addressed in order to produce an improved statutory basis for the attainment of pay equity. It is useful at this point, however, to outline those elements which seemed to find broad acceptable as premises for our deliberations, and for our more specific recommendations. These basic elements may be described as follows:

1. Commitment to the principle of pay equity

In all of our discussions, the parties took as their starting point the importance of the underlying idea of pay equity—that differences in pay for comparable work which are based solely on differences in sex are discriminatory, and that steps should be taken to eliminate these differences. In this sense, the norms set out in international covenants concerning equality and human rights, in constitutional documents, and in domestic human rights and labour legislation, have become part of the currency of the relationships between federally-regulated employers and their employees.

2. Recognition that an entitlement to equal pay is a human right

There were many differences among those we talked to about how the principle of pay equity should be articulated in legislative terms, and about what would constitute appropriate administrative mechanisms. In particular, there was some divergence among the participants in the consultations about whether the specific obligations and requirements associated with pay equity should be contained in human rights legislation or labour standards legislation, and whether such legislation should have its administrative home in a human rights agency or in a government department with responsibility for regulating employment. There was no disagreement, however, that the basic principle of entitlement to equal pay is a human right, or that this principle is appropriately enshrined in human rights legislation and correctly seen as framed by constitutional guarantees of equality.

3. Acknowledgment that employers have a positive obligation to take steps to eliminate wage differences which discriminate on the basis of sex

There is, naturally, a range of opinion about the nature and scope of the obligation which rests on employers, and a discernible dividing line between employers and trade unions over whether this positive responsibility is one which is shared with employee representatives. It is significant, however, that there is general acceptance that employers are obliged to take positive steps to ensure that the right to pay equity is not a meaningless concept.

In this respect, there was consensus among the major stakeholders that the complaint-based model which is represented by section 11 in its current form is not an adequate means of reinforcing with all employers their obligation to treat their employees in a non-discriminatory way with respect to compensation. If there was one common theme which was voiced more frequently and with more vehemence than others, it was that of disaffection with the uncertainty, tension and frustration which has prevailed under a system in which complaints of discrimination by employees are the exclusive recourse.

4. Consensus on the importance of accessibility of any pay equity regime to both unionized and non-unionized employees

Though employees in the federal jurisdiction have chosen to be represented by trade unions in many cases, there are a large number of employers whose employees are not unionized. There is general agreement that the absence of union representation should not disadvantage employees in attaining pay equity. There is, naturally, a variation in views about the best ways of guaranteeing that non-unionized employees are covered by pay equity legislation in a meaningful way.

5. Agreement that a statutory regime should provide more guidance as to the standards which are to be met

Section 11 of the *Canadian Human Rights Act*, like many human rights provisions enacted at that time, expresses a general principle, and provides minimal specific guidance concerning what criteria employers are expected to meet in carrying out their responsibility to eliminate discriminatory wage differentials. The *Equal Wages*

Guidelines adopted in 1986 provided some additional clues concerning the criteria, definitions and standards which the actors were expected to keep in mind in working towards pay equity. In spite of these efforts to provide a clearer framework for stakeholders, the parties expressed the view that the standards they are expected to meet remain obscure and that their obligations are not articulated with sufficient precision.

6. Desire for a neutral source of assistance, information and support

Participants in the employment relationships which are the arena where issues of pay equity must be addressed all commented on the need for resources to support them in their efforts to comply with their obligations under the legislation. The individual items on this list will be the subject of more extensive comments later in this report, but examples of the type of support which were mentioned by our informants included educational and promotional material, training, objective information about compensation and employment, gender analysis, third party facilitation and alternate dispute resolution, and advocacy services. Again, there was considerable variation in the views expressed about which of these items should be given priority, and who should be providing this assistance. However, almost all the participants consistently emphasized the importance of such resources and support to the fulfillment of the objectives set out in pay equity legislation.

7. Recognition of the need for ultimate recourse to an independent adjudicative body with expertise in pay equity issues

As indicated earlier, the stakeholders and others we consulted, favoured a reorientation of pay equity legislation in a direction which would clarify the positive nature of the obligation resting on employers and which would provide adequate guidance to permit them to meet this obligation. In this connection, they envisioned a system in which they would be fully supported in taking steps to achieve pay equity, and that this would make it less likely that complaints and litigation would be resorted to by employees or their representatives. Nonetheless, they accepted that recourse to an adjudicative mechanism would be a necessary feature of the legislation, even if seen only as a last resort or a corrective in anomalous cases. They stressed that the primary considerations for an adjudicative body should be its independence and its specialized expertise in pay equity.

A review of pay equity legislation requires a careful consideration of a broad range of issues which, though distinct, are closely intertwined. Pay equity is not a subject which lends itself easily to consensus on a single approach among parties with disparate interests. We were encouraged, however, by the degree to which there is commonality on the elements listed here. Though it has been left to us to draw conclusions about the numerous topics which are relevant to pay equity legislation, we think that the elements which have been mentioned are a good beginning to these deliberations.

Chapter 1 – Wage Inequities

The gender wage gap has existed for decades in Canada and across most industrialized countries.[1] In Canada, the gender wage gap appears to be deeply rooted in the economy. Women continue to earn less than their male counterparts, regardless of age, education, experience, labour market attachment or occupation.

Pay inequity has wide-reaching social consequences for all women, their families and children. In Canada today, over half of women of working age are employed, earning wages to support themselves or their families. In fact, over the past two decades, there have been dramatic increases in the employment levels of women with children.[2] The lower pay cheques these women bring home increase the risk of family and child poverty and negatively impact on retirement income.

Households headed by women are particularly vulnerable. In 2002, 67 percent of all female lone parents with children less than 16 years of age were employed.[3] According to 2001 Census data,[4] 35 percent of all female lone-parent families were living below Statistics Canada's low-income cut-offs (LICOs), compared with only 17.3 percent of male lone-parent families and 13 percent of two-parent families:

The impact of low earnings and pay inequity persists into retirement. In 2000, almost three quarters (71%) of all seniors aged 65 and over living on low incomes were women. Senior women were almost twice as likely to live below low-income cut-offs as their male counterparts—21.3 percent women versus 11 percent of men. Senior women living alone were even worse off. The low income rate for these women was 43 percent compared to 31 percent for their male counterparts.[5]

Clearly, pay inequity has long-term consequences for many families, children and society as a whole. Pay inequity and poverty can have significant social and economic costs related to, for example, health care, community services, shelter and housing.

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[1] Ariane Tennant. (2002). *Pay Equity in Europe: A Comparative Study of European Union and Selected National Approaches*. Unpublished research paper commissioned by the Pay Equity Task Force.

[2] See for example, Statistics Canada, (2000), *Women in Canada 2000: A gender-based statistical report*.

[3] Statistics Canada. (2003). *Women in Canada: Work Chapter Updates*, p. 8.

[4] Statistics Canada, *2001 Census of Population*.

[5] See Statistics Canada at http://www12.statcan.ca/english/census01/products/analytic/companion/inc/canada.cfm#15.

The gender wage gap exists across many countries–hovering around 25%.

Although wage inequity has been acknowledged since the mid-1900s when the International Labour Organization adopted Convention 100, thereby giving effect to the principle of equal pay, the wage gap has remained significant, hovering at about 25 percent in most industrialized countries. In Europe, reducing the gender wage gap was identified as a priority at the Stockholm European Council in 2001. In July 2003, the Council of the European Union issued its decision with respect to the guidelines for the employment policies of the Member States, further strengthening the resolve to reduce gender gaps in pay through a multi-faceted approach.

> 6. GENDER EQUALITY
>
> Member States will, through an integrated approach combining gender mainstreaming and specific policy actions, encourage female labour market participation and achieve a substantial reduction in gender gaps in employment rates, unemployment rates, and pay by 2010. The role of the social partners is crucial in this respect. In particular, with a view to its elimination, policies will aim to achieve by 2010 a substantial reduction in the gender pay gap in each Member State, through a multi-faceted approach addressing the underlying factors of the gender pay gap, including sectoral and occupational segregation, education and training, job classifications and pay systems, awareness-raising and transparency.[6]

A vast amount of research has emerged attempting to measure and identify factors which may explain the gender wage gap. Over the years, essential tools to facilitate the elimination of gender wage discrimination have also been developed, such as job evaluation methods, pay equity plans, and different methodologies to measure the gap.

Today we realize that wage discrimination affects other groups as well, notably visible minorities, Aboriginal people, and persons with a disability, many of whom also live below the low-income cut-offs established by Statistics Canada and face many of the same challenges and consequences as women. This was highlighted in several submissions to the Task Force:

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[6] Council of the European Union. (2003). 2003/578/EC: Council Decision of 22 July 2003 on guidelines for the employment policies of the Member States. *Official Journal of the European Union L 197*, Vol. 46, 5 August 2003, p. 20. http://europa.eu.int/eur-lex/pri/en/oj/dat/2003/l_197/l_19720030805en00130021.pdf.

> The federal government should broaden the concept of pay equity to include pay discrimination based on both race and gender. Many recent studies reveal a large and growing wage gap for workers of colour. [...] Some of this gap is due to direct discrimination, which should be covered by the anti-discriminatory provisions of the Human Rights Act. Some of it however is the result of occupational segregation and the channelling of workers of colour into what have been traditionally female jobs.
>
> Canadian Labour Congress (CLC). Final Submission to the Pay Equity Task Force, November 2002, pp. 6-7.

Moreover, many of the participants in our consultation process pointed out that consideration must be given to the double jeopardy that women workers face if they are members of visible minorities, Aboriginal people, or persons with disabilities:

> While there is merit in maintaining a gender-oriented perspective for pay equity, there is emerging evidence that systemic and non-systemic discrimination in pay and employment is at least as likely if not more likely for individuals who are members of other protected groups, and more likely where women are also members of these historically disadvantaged groups.
>
> Canadian Association of University Teachers (CAUT). Submission to the Pay Equity Force, November 2002, p. 34.

To demonstrate its commitment to addressing these issues, Canada has ratified a number of international agreements to counter racism and discrimination. That is why this chapter will examine the pay equity issue in a broader context. We will sketch a picture of the situation of each group in the labour market and present the main aspects of the wage inequity issues that affect them.

Canadian Overview

Gender Wage Inequality

Women's labour market participation has increased dramatically.

As a result of women's substantial efforts, their participation in the labour market and their human capital characteristics began to evolve dramatically in the 1970s and have continued to improve. In 2001, 46.2 percent of employed persons were women versus 37.1 percent in 1976, indicating that women's presence in the Canadian labour market has grown markedly. The characteristics of that growth are also remarkable. With respect to education, the percentage of women aged 25 and older with a university degree has increased sharply from 14 percent in 1991 to 21 percent in 2001.[7] Women have also clearly progressed in terms of their sustained presence in the labour market and their greater occupational experience. In 2001, 62 percent of women with children under age 3 held jobs compared with 28 percent in 1976.[8] This reflects, in part, that women are taking shorter maternity leaves and returning to work much earlier after childbirth. A Statistics Canada study indicates that 86 percent of women returned to work within one year after childbirth, and within two years, 93 percent were in paid employment.[9] The general profile of the female population is thus increasingly similar to that of the male population with respect to labour activity, education and experience.

Despite women's progress, the wage gap remains and may be increasing.

Despite such remarkable progress, women continue to earn less than men as shown below in Table 1.1. Data from Canada's *2001 Census* indicate that a substantial earnings gap between the sexes persists and has even widened slightly since the *1996 Census*.

In 2000, average employment income for full-time, full-year female workers was equal to 70.8 percent of average employment income for men versus 70.9 percent in 1995. As indicated in Table 1.1, the wage gap is found at all levels of education and, surprisingly, it has widened for the most educated, falling from 70.8 percent in 1995 for university graduates to 67.5 percent in 2000. This change reflects, in part, greater income growth for the most educated men, at 10.3 percent, between 1995 and 2000, compared with 5.1 percent for their female counterparts.

These statistics imply that the rate of return on men's education, particularly at higher educational levels, far exceeds the rate of return for women.[10] This observation is reinforced by data on the average employment income of full-time, full-year workers with a university degree as shown in Table 1.1.

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[7] Statistics Canada. *The Daily*. March 11, 2003.

[8] Statistics Canada, *supra*, note 3.

[9] Katherine Marshall. (1999). "Employment after childbirth." *Perspectives on Labour and Income*, Autumn 1999. Statistics Canada, Vol. 11, No. 3, p. 22.

Table 1.1: Women to Men's Average Employment Income, Full-Time, Full-Year Workers Canada, 1995 and 2000

Level of Education	1995 %	2000 %
Less than high school graduation certificate	67.2	68.8
High school graduation certificate and/or some postsecondary	71.0	72.4
Trades certificate or diploma	63.5	64.3
College certificate or diploma	71.0	70.0
University certificate, diploma or degree	70.8	67.5
Total	**70.9**	**70.8**

Source: Statistics Canada, *2001 Census of Population.*

As seen in Table 1.2 and Figure 1, female university graduates are disadvantaged as soon as they join the workforce and that disadvantage compounds with age. For every single age group, the earnings gap for women with a university degree has widened between 1995 and 2000.

For every single age group, the earnings gap for women with a university degree has widened.

Table 1.2: Women to Men's Average Employment Income, Full-Time, Full-Year Workers with a University Degree, Canada 1995 and 2000

Age Group	1995 %	2000 %
15-24	87.3	84.3
25-34	81.4	76.7
35-44	74.2	70.3
45-54	69.3	67.7
55-64	63.1	59.7

Source: Statistics Canada, *2001 Census of Population.*

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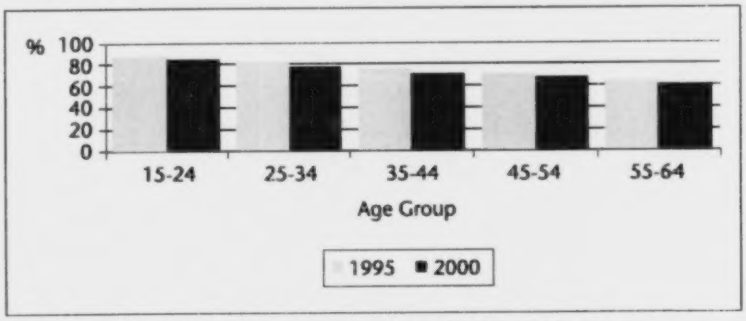
[10] This outcome is also noted in the submission by Status of Women Canada to the Pay Equity Task Force, November 2002, p. 1.

Figure 1: Women to Men's Average Employment Income Full-Time, Full-Year Workers with a University Degree, Canada 1995 and 2000



Source: Statistics Canada, *2001 Census of Population*. Based on Table 1.2.

This may be attributable partly to the fact that women and men choose different types of studies as well as the fact that women in upper age brackets have had a less sustained presence in the labour market. However, in a longitudinal study conducted by Finnie and Wannell,[11] the analysis of gender wage gaps for university graduates in science and engineering confirmed that, even for the most recent women graduates of the same age and education, the wage gap they face upon entering the labour market soon increases. In another longitudinal analysis conducted by Finnie on the earnings of three cohorts of post secondary graduates—1982, 1986 and 1990 graduates, the findings were similar. Except for doctoral graduates of the middle cohort, the mean earnings gap between men and women widened between two and five years after graduation.[12]

Occupational Segregation

Women remain concentrated in few occupational groups.

Although women have made substantial strides in terms of education, labour market experience and labour market attachment, they continue to face a major obstacle in the workplace—occupational segregation. Occupational segregation means that a substantial proportion of women are employed in a limited range of occupations where the femininity ratio or proportion of women is very high. For example, in 2002,

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[11] Ross Finnie and Ted Wannell. (1999). "The Gender Earnings Gap Amongst Canadian Bachelor's Level University Graduates: A Cross-Cohort Longitudinal Analysis." In R.P. Chaykowski and Lisa M. Powell (Eds.), *Women and Work*. Kingston: McGill-Queens University Press.

[12] Ross Finnie. (2001). "Employment and earnings of postsecondary graduates." *Perspectives*. Autumn 2001. Statistics Canada.

70 percent of all female workers in Canada worked in the areas of Teaching, Nursing and related health occupations, Clerical or other administrative positions, and Sales and service occupations. As shown in Table 1.3, women accounted for between 58 and 87 percent of each occupational group in 2002, and in none of these occupational groups has the femininity ratio decreased since 1987.

Table 1.3: Femininity Ratio for Occupations Accounting for 70 Percent of the Female Workforce Canada, 1987 and 2002

	Femininity Ratio	
Occupations	**1987** %	**2002** %
Teaching	57.3	64.4
Nursing/therapy/other health-related occupations	87.3	87.3
Clerical and administrative	74.4	75.0
Sales and service	55.7	58.6

Source: Statistics Canada, (2003), *Women in Canada: Work Chapter Updates*, Table 11, p. 21.

The occupational segregation of women and low wages usually go hand in hand. For example, as shown in Table 1.4, the share of the lowest-paying occupations by women working full year, full time is more than three quarters (76.5%) compared to their 41 percent total share of full-time full-year work. In addition, women earn less on average than men in every single low-paying occupational group with the exception of Babysitters, nannies and parents' helpers.

Women are highly overrepresented in the 10 lowest paying occupations.

Table 1.4: Ten Lowest-Paying Occupations, Full-Year, Full-Time Workers, Canada 2000

Occupation	Average Earnings $	Number of Women	Women's Average Earnings $	Number of Men	Men's Average Earnings $	Women % of Occupation	W/M Earnings Ratio %
Babysitters, nannies and parents' helpers	15,846	25,885	15,862	785	15,310	97.1	104.3
Food counter attendants, kitchen helpers and related occupations	19,338	39,000	19,053	15,290	20,241	71.8	94.1
Food and beverage servers	18,319	42,165	17,030	12,495	22,671	77.1	75.1
Service station attendants	18,470	2,245	15,750	6,070	19,475	9.2	80.9
Bartenders	19,877	9,420	18,347	6,755	22,008	58.2	83.4
Cashiers	19,922	49,945	19,391	8,830	22,925	85.0	84.5
Harvesting labourers	20,158	1,080	18,246	1,135	21,971	48.8	83.0
Tailors, dressmakers, furriers and milliners	20,499	10,960	18,882	2,465	27,690	81.6	68.2
Sewing machine operators	20,575	28,390	19,997	2,650	26,782	91.5	74.7
Ironing, pressing and finishing occupations	20,663	2,465	19,319	1,395	23,041	63.9	83.8
Total lowest-paid occupations		185,670		57,085		76.5	
Percent of total occupations		5.3%		1.1%			
TOTAL OCCUPATIONS	8,565,385	3,511,285	34,642	5,054,100	49,198	41.0	70.4

Source: Adapted from Statistics Canada, *2001 Census of Population.*

Conversely, women are highly underrepresented in the ten highest-paying occupations. Table 1.5 shows that women's share of the highest-paid occupations in less than one quarter (23.3%), much lower that their overall representation of full-year, full-time workers (41%). In addition, with the exception of Judges and General practitioners, the gender earnings ratio is less than the aggregate average for full-year, full-time women workers (70.4%).

Table 1.5: Ten Highest Paying Occupations, Full-Year, Full-Time Workers Canada 2000

Occupation	Average Earnings $	Number of Women	Women's Average Earnings $	Number of Men	Men's Average Earnings $	Women % of Occupation	W/M Earnings Ratio %
Judges	142,518	445	131,663	1,380	146,008	24.4	90.2
Specialist physicians	141,597	3,845	98,383	8,635	160,833	30.8	61.2
Senior managers – Financial, communications carriers and other business services	130,802	8,810	90,622	32,105	141,829	21.5	63.9
General practitioners and family physicians	122,463	6,780	96,958	15,260	133,789	30.8	72.5
Dentists	118,350	2,000	82,254	6,710	129,104	22.9	63.7
Senior managers – Goods production, utilities, transportation and construction	115,623	5,175	75,267	39,455	120,914	11.6	62.2
Lawyers and Quebec notaries	103,287	14,660	77,451	32,630	114,894	31.0	67.4
Senior managers – Trade, broadcasting and other services, n.e.c	101,176	6,700	67,161	30,990	108,527	17.8	61.8
Securities agents, investment dealers and traders	98,919	6,535	55,299	11,230	124,290	36.8	44.5
Petroleum engineers	96,703	435	61,057	3,935	100,633	10.0	60.7
Total highest-paid occupations		55,385		182,330		23.3	
Percent of total occupations		1.6%		3.6%			
TOTAL OCCUPATIONS	8,565,385	3,511,285	34,642	5,054,100	49,198	41.0	70.4

Source: Adapted from Statistics Canada, *2001 Census of Population.*

Federal Jurisdiction

Broadly speaking, the federal jurisdiction includes all private-sector businesses which are interprovincial or international in scope such as air, water, rail and road transportation, as well as telecommunications, broadcasting, banking and some federal Crown corporations such as Canada Post. It also includes the federal Public Service.

We would have liked to include in this report a detailed analysis of women's occupations and wages in sectors under federal jurisdiction. However, the lack of comprehensive data specific to federal jurisdiction did not allow for an in-depth analysis. As a result, we based our analysis on available but limited data for sectors under federal jurisdiction, combined with aggregate labour market data in Canada. Our basic assumption is that the labour market characteristics in federal jurisdiction are reflective of the Canadian labour market in general. In the future, the agencies concerned should ensure that comprehensive data is collected for the federal jurisdiction in order to better assess results at the federal level and identify emerging trends.

Employment Equity Act.

The most comprehensive data that we have with respect to the federally-regulated private sector is employment equity data. Under the *Employment Equity Act* (EEA), all federally-regulated employers with 100 or more employees must report annually to Human Resources Development Canada on their progress in achieving a representative workforce. These reports provide information on the industrial sector, occupational group, employment status, salary ranges, hires, promotions and terminations for the four designated groups under the EEA – women, Aboriginal peoples, persons with disabilities and members of visible minorities.

Federal Jurisdiction – Public Sector

In the public sector under federal jurisdiction, available data indicate that, although women have made some progress, they still remain heavily concentrated in the lower wage brackets and in a few occupational groups.

Salary Band

Women remain underpresented in the higher salary bands.

Women accounted for 52.5 percent of all employees in the Public Service in fiscal year 2000-01 and the proportion of women earning $50,000 or more increased from 25.9 percent in fiscal year 2000-01 to 33.3 percent in 2001-02 compared with the increase in the proportion of their male counterparts from

49.4 percent to 58.3 percent over the same period. However, women still remain overrepresented in the lower wage brackets of $25,000 to $49,999 and underrepresented in the brackets of $50,000 to $100,000 and over.[13] In fact, two thirds of women are in a wage bracket of less than $50,000 compared with little over half the men.[14]

Occupational Segregation

Women remain highly segregated by occupation.

In the federal Public Service, women are also highly segregated by occupational category, as shown in Table 1.6. Almost 80 percent of women (4 out of 5) are concentrated in two of the six occupational categories—Administration and Foreign Service (44.8%) and Administrative Support (33.8%) compared to less than 50 percent of males (42.6%). Only 1.5 percent of women compared to 3.5 percent of males are in the Executive category and 6.2 percent of women, compared to 16.0 percent of males, are in the Technical category. Women are also highly segregated within occupational categories. For example, almost three quarters (74.1%) of women in the Technical category are concentrated in two of the 14 occupational groups—Engineering and Scientific Support (33.0%) and Social Science Support (41.1%)—compared to less than 50 percent (47.8%) of males. The Scientific and Professional category accounts for 9.4 percent of the female workforce in the Public Service and is more varied in terms of occupational distribution. However, 54 percent of women in this category can be found in three of the 29 occupational groups (Economics, Sociology and Statistics; Law; and Nursing) compared to only 31 percent of males.

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[13] Treasury Board of Canada Secretariat. (2003). *Annual Report to Parliament: Employment Equity in the Federal Public Service 2001–02*. Ottawa. Table 7. We excluded salary brackets of less than $24,000, which have few women, given the few employees.

[14] These figures also include part-time female workers, which may increase the actual wage gap. However, the fact that men belonging to a designated group cannot be identified may minimize the wage gap. The net result cannot be deduced based on published data.

Table 1.6: Distribution of Federal Public Service Employees by Gender and Occupational Category March 31, 2002

Occupational Category	Total (%)	Male (%)	Female (%)
Executive	3,901 (2.5)	2,653 (3.5)	1,248 (1.5)
Scientific & Professional	21,156 (13.4)	12,933 (17.3)	8,223 (9.9)
Administration & Foreign Service	63,298 (40.2)	26,238 (35.1)	37,060 (44.8)
Technical	17,097 (10.9)	11,971 (35.1)	5,126 (6.2)
Administrative Support	33,602 (21.3)	5,649 (7.5)	27,953 (33.8)
Operational	18,456 (11.7)	15,403 (20.6)	3,053 (3.7)
Total	**157,510 (100.0)**	**74,847 (100.0)**	**82,663 (100.0)**

Source: Treasury Board of Canada Secretariat. (2003). *Annual Report to Parliament: Employment Equity in the Federal Public Service 2001-02*. Ottawa. Table 7.

Federal Jurisdiction – Private Sector

Salary Range

Women working full time earn, on average, approximately 79 cents for every dollar a male earns in the federally-regulated private sector.

In organizations of 100 or more employees under federal jurisdiction, the gender wage ratio for full-time employees is 78.6 percent.[15] There is substantial dispersion across the various industries, as shown in Table 1.7. The data indicate that close to half (48.8%) of all the women in the workforce covered by the *Employment Equity Act* (EEA) work in the Banking sector. This industry, where seven out of ten employees are women (71.4%), has the lowest gender wage ratio at 64.0 percent well below the average of 78.6 percent.

The smallest gender wage gap is in the Communications sector for full-time employees.

In the Transportation sector, where close to one quarter of employees are women, the wage ratio is 75.9 percent. In 2001 this industry employed 15.5 percent of the female workforce covered by the EEA. In the Communications sector, the female-male wage ratio is 86.9 percent, well above the average of 78.6 percent, with women representing four out of ten employees (41.3%). In 2001, the Communications sector employed one third of the female workforce covered by the Act. The remaining sectors employ only 4.5 percent of the female workforce, with a female-male wage ratio a little above (80.8%) the sector average of 78.6 percent.

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[15] Human Resources Development Canada. (2003). *Annual Report: Employment Equity Act 2002*, p. 51.

Table 1.7: Full-Time Employees by Sector, 2001

Sector	Women's Average Salaries/ Men's Average Salaries	Femininity Ratio % of Women in Each Sector	Distribution of Female Workforce %
Banking	64.0	71.4	48.8
Transportation	75.9	24.6	15.5
Communications	86.9	41.3	31.2
Other sectors	80.8	28.5	4.5
All sectors	**78.6**	**44.8**	**100.0**

Source: Human Resources Development Canada. (2003). *2002 Annual Report: Employment Equity Act.*

According to Human Resources Development Canada, an analysis of wages for all four sectors indicates that women are more likely than their male counterparts to be found in the lower salary band:

> Around 17.8% of full-time women earned less than $30,000 in 2001 compared to only 8.6% of men. In the upper salary range (over $50,000), only 25.2% of women were in this band compared to 47.4% of men. **In other words, there were ten women for every five men in the lower salary band, while in the upper band the ratio was five women for every 10 men.** [Emphasis ours][16]

Occupational Segregation

Occupational segregation in the federally-regulated private sector mirrors the segregation in the Canadian labour force. Almost 70 percent (69.6%) of the female workforce governed by the

Occupational segregation in the federally-regulated private sector mirrors the segregation in the Canadian labour force.

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[16] Ibid., pp. 51-52.

Employment Equity Act is found in four out of 14 occupational groups as shown in Table 1.8, all of these groups are significantly female, with a femininity ratio ranging from 63.3 to 81 percent.

Table 1.8: Occupational Groups Accounting for 69.6 Percent of the Federally-Regulated Female Workforce, 2001

Occupational Groups	Number of Women	Femininity Ratio %
Clerical personnel	12,097	66.6
Administrative and senior clerical personnel	35,663	81.0
Intermediate sales and service personnel	19,776	65.9
Supervisors	13,671	63.3
Total of all occupational groups	**284,720**	**44.9**

Source: Human Resources Development Canada. (2003). *2002 Annual Report: Employment Equity Act.*

On the other hand, female workers are highly underrepresented in other occupational groups like Senior managers, Supervisors—crafts and trades, and Skilled trade workers.

The data above indicate that gender-based occupational segregation remains firmly fixed in all sectors of our economy, including the federal Public Service and other sectors under federal jurisdiction. At the same time, one fundamental trait characterizes both the overall economy and the federal jurisdiction in general: women are distinctly disadvantaged with respect to wages despite their significant progress in educational attainment, labour market experience and labour market attachment.

Although, as we mentioned previously, we do not have comprehensive and directly comparable data for all the jurisdictions, it remains evident that there is a clear link between women's occupational segregation and their relative lower wages and salaries. In other words, the greater the proportion of women in an occupation, the lower the relative pay.

The reciprocal link between an occupation's femininity ratio and relative pay is of concern from a pay equity standpoint and raises an important question: *Does this relation arise from objective factors in the labour market, or from discriminatory factors that lead to female jobs being undervalued and underpaid?*

Organization Size

The majority of organizations in the federally-regulated private sector employ fewer than 100 employees.

As seen earlier, wage ratios in organizations under federal jurisdiction were higher than in the labour market in general. Note that only organizations of 100 or more employees are subject to the *Employment Equity Act*. Studies indicate that the size of an organization influences the gender wage gap. In fact, proportionately more women work in small organizations[17] where average wages are generally lower than in large enterprises. Available data indicate that, in 2001, 95.4 percent of all organizations under federal jurisdiction employed fewer than 100 employees. From that total, 91.3 percent have fewer than 50 employees and 4.1 percent have 50 to 99 employees. Comparable data for Canadian organizations not under federal jurisdiction are 94.9 percent and 2.9 percent respectively. The size of organizations in the federally-regulated private sector has implications with respect to the scope of new federal pay equity legislation. If such legislation were to apply only to organizations with 100 or more employees, a substantial proportion of workers would not be protected. This issue is addressed in Chapter 6 of this report.

Studies of the Wage Gap

Research indicates that a gender wage gap exists and a large portion of that gap remains unexplained.

In line with the plethora of research conducted in other countries on the gender wage gap, Canadian empirical research has consistently found that a gender wage gap exists and that a large portion of that gap, ranging from 25 to 88 percent, is not explained by human capital and other labour market characteristics.[18] For example, Marie Drolet[19] notes that the fact that men earn more than women is one of the most studied issues in labour economics.

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[17] Women are more likely to work in organizations with fewer than 20 employees, according to Marie Drolet, (2002), "Can the Workplace Explain Canadian Gender Pay Differentials?," *Canadian Public Policy – Analyse de Politiques*, Vol. 28, Supplement 1, May 2002, pp. S41-S63.

[18] See, for example, Michael Baker et al., (1995), "The Distribution of the Male/Female Earnings Differential, 1970-1990," *Canadian Journal of Economics*, Vol. 28, No. 3, pp. 479-501; Marie Drolet, (2002), "Can the Workplace Explain Canadian Gender Pay Differentials?," *Canadian Public Policy – Analyse de Politiques*, Vol. 28, S1, May 2002, p. S41; Marie Drolet, (2002), "The male-female wage gap," in *Perspectives on Labour and Income*, Spring 2002 , Vol. 14, No. 1; David Coish and Alison Hale, (1995), *The wage gap between men and women: An update*, Statistics Canada; L.N. Christofides and R. Swidinsky, (1994), "Wage Determination by Gender and Visible Minority Status: Evidence from the 1989 LMAS," *Canadian Public Policy – Analyse de Politiques*, Vol. 20, No. 1, pp. 34-51; and Morley Gunderson, (1998), *Women and the Canadian Labour Market: Transitions towards the Future*. Toronto: Statistics Canada and Nelson Publishing.

[19] Marie Drolet, *supra*, note 17, p. S41.

In a recent Canadian study,[20] using matched employee-employer data from the 1999 Workplace and Employer Survey by Statistics Canada, Marie Drolet examines the effect of workplace characteristics, in addition to the usual human capital characteristics, on the gender wage gap. In our view, it is one of the most comprehensive studies in Canada on the gender gap to date. It is the first Canadian study that includes workplace characteristics such as self-directed work groups, performance-based pay, and training expenditures. The study finds that workplace characteristics account for a larger part of the wage gap than worker characteristics, 42.6 percent and 18.6 percent, respectively. However, despite the inclusion of workplace characteristics, 38.8 percent of the gender wage gap remains unexplained. As noted by Marie Drolet, despite the addition of a rich variety of workplace variables, a substantial portion of the Canadian gender wage gap remains baffling.[21]

Most empirical studies indicate that there is a wage gap and that a substantial component of this gap cannot be explained by the usual human capital and workplace characteristics associated with individuals. Although these studies provide evidence of the wage gap, they do not provide evidence related to the underevaluation of women's work. In order to fully assess the situation of women, studies must be conducted at the organizational level, focusing on predominantly female and predominantly male jobs of equal value but unequal pay. As Nan Weiner indicates:

> Such research examines the average earnings of individual men and women in the economy, not the pay for jobs within a single employer. In other words, the male-female differential measures neither the value of jobs nor the pay for jobs.[22]

In addition, it is important to note that gender wage gap studies usually include only two of the four criteria relevant to job value determination—education, and experience/management responsibility. These criteria are usually interpreted quite narrowly in these studies and this may result in a biased explanation for low pay for female jobs—jobs which involve a wide range of qualifications and other types of responsibilities. Female job titles are often a biased indicator of job content, given the invisibility of female job requirements. When attempting to ascertain whether there is wage discrimination, it is important to question incumbents using questionnaires free of gender bias and then to validate these answers. Obviously, the approach and data used to detect a breach of the pay equity principle differ substantially from those used in labour economics analyses. However, to their credit, empirical studies on gender wage gaps do highlight an important issue—an unexplained wage gap—and indicate that this phenomenon persists even when the scope of the analysis is broadened to include additional variables.

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[20] Ibid.

[21] Ibid, p. S55.

[22] Nan Weiner. (2002). "Effective Redress of Pay Inequities." *Canadian Public Policy – Analyse de politiques*. Vol. 28, Supplement 1, May 2002, note 5, p. S113.

One assumption of some of the studies that aim to explain the wage gap is that women choose jobs with certain characteristics (for example, the possibility of balancing work with family obligations) in exchange for lower pay. The pay equity perspective is the opposite and seeks to determine whether jobs are low paying because they are predominantly female—in other words, whether the *female job* label results in their devaluation.

Devaluation of Female Jobs

A number of studies on predominantly female jobs (secretary, librarian, nurse) have shed light on the explanatory role of various psychosocial, economic and institutional factors that may create and maintain wage inequity.

Prejudices and Stereotypes

There are many prejudices and stereotypes in the labour market regarding women's work. Richard Anker[23] discusses a number of positive and negative stereotypes about women's abilities which may have an impact on occupational segregation. Table 1.9 shows the link between stereotyped attitudes regarding women's abilities and occupational segregation or the femaleness of a job.

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[23] Richard Anker. (1997). "Theories of occupational segregation by sex: An overview." *International Labour Review*, Volume 136, No. 3. Geneva: ILO.

Table 1.9: Misconceptions regarding Women's Skills and the Impact on Occupational Segregation

Stereotyped Characteristics of Women	Effect on Occupational Segregation	Examples of Occupations Associated with Certain Skills
Perceived positive traits		
1. Concern for others	Greater demand in occupations where one takes care of others: children, patients, seniors.	Nurse, doctor, midwife, social worker, child care provider, teacher.
2. Domestic skills experience	Greater demand in home-related occupations, tasks almost always done by women in the form of unpaid work.	Domestic servant, and cleaner, cook, waitress, seamstress.
3. Manual dexterity	Greater demand in occupations that require dexterity.	Typist, seamstress, knitter, assembler of miniature components.
Perceived negative traits		
1. Little interest in authority	Lesser demand in occupations requiring management or supervisory responsibilities.	General manager, production manager, sales manager.
2. Lesser physical strength	Lesser demand in occupations requiring substantial physical effort.	Construction worker, miner.
3. Lack of aptitude in mathematics and sciences	Lesser demand in scientific occupations.	Physicist, engineer, statistician.

Source: Adapted from Richard Anker, (1997), "Theories of occupational segregation by sex: An overview," *International Labour Review*, Vol. 136, No. 3, Geneva: ILO, pp. 325-327.

Many aspects of women's work may be overlooked.

The stereotypical positive "female" characteristics influence perception of female jobs in two ways. First, they are perceived as essential job requirements in certain occupations and tend to overshadow other requirements of the job that are often overlooked. For example, when nurses come to mind, we think first of patient support and empathy, relegating professional requirements such as a command of complex health care equipment, challenging working conditions, and physical effort to the background. Likewise, we associate clerical work with jobs with little autonomy in pleasant environments, an impression that ignores occupational requirements such as mastering word processing software and taking the concomitant skill upgrading due to changing technology, working under pressure, and coping with frequent interruptions.

Second, the prejudiced belief that perceived "female" characteristics[24] are innate has a negative effect on the value of women's work. As the Organisation for Economic Co-operation and Development (OECD) states:

> This gender-based approach to labour management was accompanied by a recognition of specific "qualities" in women, such as the "dexterity" and "accuracy" of female operatives, or the "devotion" of nurses and the "interpersonal and organisational skills" of secretaries. But it was also accompanied by an economic and professional devaluation of these same "qualities", seen as something acquired naturally or by socialisation through women's role in the family and society. The greater the similarity between jobs and the work partly carried out free of charge in the home, the greater this devaluation.[25]

Conversely, when women's work demands requirements such as authority, physical strength or scientific skills, these are often ignored or minimized.

Another bias that contributes to wage inequity is the misconception that women's pay is supplemental rather than essential. Although this misconception is clearly contradicted by today's reality, it still appears to be reflected in the structure of some compensation systems that have been established over the years.

Job Evaluation Methods

Early job evaluation methods were based on male jobs.

Job value determination methods were first created in the years leading up to the Second World War to enable managers to justify hierarchy and pay, particularly for supervisory and production jobs. The main job value determination systems were designed using the dominant job model at the time, which was based almost exclusively on male jobs. These systems have been criticized for giving little or no consideration to the characteristics specific to female work. Their use in recent years to determine the value of female jobs results in substantial distortion, since major aspects of these jobs are undervalued due to a lack of appropriate tools.

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[24] See Table 1.9.

[25] Organization for Economic Co-operation and Development (OECD). (1998). Extracted from *The Future of Female-dominated Occupations*. (ISBN: 92-64-16149-X (81 98 10 1) (Print)). Copyright © OECD, 1998, p. 196.

Another limitation of such practices is that organizations may use different value determination methods depending on the job group. This helps to maintain any discriminatory wage gaps that may exist. The International Labour Organization noted this:

> Another difficulty is that many enterprises use different methods for different categories of workers; for example, an enterprise may use point rating for manual workers and classification for non-manual workers other than technicians and managerial grades. In enterprises using the same method it is usual to have two or more sets of factors, one for each staff category, because the typical factors of one job (e.g. effort and working conditions) may be very different from the typical factors of another. The accuracy of a plan is, indeed, in inverse ratio to its scope – a single plan using general factors is much less accurate than an articulated plan using more narrowly defined factors. The disadvantage of articulated plans is that they cannot overcome wage discrimination associated with job segregation between these broad categories; but they certainly are less difficult and expensive to prepare than a single plan covering all workers.[26]

Pay Practices

Standard pay practices may create or maintain gender wage gaps.

Standard pay practices may help to create or maintain a wage gap that puts female jobs at a disadvantage without any justification in terms of productivity or a labour shortage. One example of this is resorting to market wages, where organizations base their pay on the wages their competitors pay for a particular occupation. This allows organizations to establish a range within which to set their own pay. Using market wages to determine pay in an enterprise may have a discriminatory effect. As Nan Weiner explains:

> Just because an organization's competition is paying less for a female job, the organization cannot pay less than that paid to comparably valued male jobs within the organization. To help achieve pay equity, salary surveys of women's jobs should be avoided until pay equity is widely

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[26] International Labour Office (ILO). (1986). *Job Evaluation*. Geneva, p. 133.

> achieved, since such surveys will simply incorporate any underpayment of women's work that exists among organizations in general.[27]

The reason for this is that market wages are the outcome of decisions by a series of employers that, within a given socio-economic context, adopt the same practices (for example, traditional value determination methods, which are prejudicial to female jobs).

A second practice with a potentially discriminatory effect is that of establishing a new employee's pay on his or her previous pay; for women, this contributes to maintaining an unjustified gender gap.

Wage structure may differ according to job class.

Finally, wage structures are very often differentiated according to job class, which puts predominantly female job classes at a disadvantage. Thus, in some workplaces, male jobs tend to have fewer pay scale increments than do female jobs or are paid at a single rate. Consequently, it takes more years for women to reach the maximum pay for a job than for men with jobs of the same value, thus maintaining an unjustified gender-based wage disparity.[28]

Bargaining Power

An analysis of labour relations indicates that, in many cases, bargaining units are established in such a way as to reproduce gender-based occupational segregation. Thus, some certification units or unions represent female jobs (clerical workers, nurses, teachers) while others represent male jobs (trades, technicians). Historically, predominantly female unions have been unable to exercise enough bargaining power to make progress in terms of pay and non-wage benefits comparable to those of male jobs.

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[27] Nan Weiner, *supra*, note 22, p. S110.

[28] See the ruling for *Commission des droits de la personne et des droits de la jeunesse* v. *Université Laval*. Tribunal des droits de la personne du Québec. August 20, 2000.

> Long-established collective bargaining norms and structures correct some sources of gender-based pay discrimination but perpetuate others. [...] The analysis identifies gender-segregated patterns of union representation and bargaining as the major obstacle to be overcome. Collective bargaining "as usual" continues to produce low pay for traditional women's work, in large part because women are often isolated in bargaining units that are predominantly female. Labour law and practice make it all but impossible for workers in women-dominated bargaining units to negotiate in tandem with those performing work of equal value in male-dominated bargaining units. [...] Traditional union notions of community of interest and fair comparisons perpetuate rather than challenge gender-based systems of wage determination that disadvantage women. Given job segregation by gender, union bargaining strategies designed to achieve fair pay (for example, "pay the job, not the worker" and across-the-board wage increases) narrow but do not eliminate the gender gap in pay.
>
> Anne Forrest. (2003). *After the Pay Equity Award: Can Collective Bargaining Maintain Equal Pay for Work of Equal Value?* Unpublished research paper commissioned by the Pay Equity Task Force, p. iii.

Women have less bargaining power.

Moreover, union density is lower for female workers than for male workers in the private sector (13.0% versus 21.9%)[29], and the jobs of many non-unionized female workers are precarious. Both factors combined reduce their bargaining power significantly.

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[29] Statistics Canada (2003). "Fact-sheet on unionization," *Perspectives on Labour and Income*, Vol. 4, No. 8, August 2003, Table 2a.

> Non-standard employment has been on the increase in various forms. This includes self-employment, part-time employment, limited-term contracts, temporary help agencies, independent contracting, and telecommuting. [...] Many forms of non-standard employment are also less likely to be covered by a collective agreement and hence less likely to be afforded the degree of "protection" that is often provided by unions and collective bargaining.
>
> Michael Baker and Morley Gunderson. (2002). *Non-Standard Employment and Pay Equity.* Unpublished research paper commissioned by the Pay Equity Task Force, p. 1.

The factors presented above interact and lead to inequity that can be described as systemic. In other words, in a given enterprise, female jobs bear the detrimental effects of the invisibility of certain female job requirements due to prejudices and stereotypes, traditional value determination methods, and pay practices that reproduce market inequities. The relatively lower bargaining power of female workers cannot counter these effects. In fact, the purpose of pay equity is to overcome the effect of such factors, in particular through non-sexist value determination methods and pay practices.

The introduction of pay equity legislation or policies both in Canada and the United States and elsewhere in the world confirms the fact that the reciprocal link between the femininity ratio and relative pay results from systemic discrimination against people in predominantly female jobs.

This is also recognized by the International Labour Organization in its recent report *Time for Equality at Work*:

ILO study notes that occupational segregation by sex has been more detrimental to women.

> 138. Occupational segregation is frequently regarded as evidence of inequality as it includes aspects of social stratification in power, skills and earnings. [...] Occupational segregation by sex has been more detrimental to women than to men: "female" occupations are generally less attractive, with a tendency towards lower pay, lower status and fewer advancement possibilities. Similar discriminatory processes operate along the lines of race, ethnic origin, age, disability and health status, among others, and result in the

> undervaluation and segregation of groups of workers into jobs with less favourable terms and conditions of employment.[30]

A great many cases of gender-based wage discrimination have been brought to the fore and wage gaps subsequently corrected. For example, in Ontario, the implementation of pay equity led to the following adjustments: at a law firm, the job of investigator (a male job) and that of legal secretary (a female job) were compared, and legal secretaries received a raise of $4.28 per hour; at a bakery, the job of service manager (a male job) and that of staff manager (a female job) were compared, and the staff manager received a raise of $4.65 per hour; at a supermarket, the job of grocery clerk (a male job) and of cashier (a female job) were found to be of equal value and cashiers received an adjustment of $1,477 per year.[31]

Designated Groups in the Labour Market and Wage Gaps

The wage gap persists for women and other disadvantaged groups..

As we mentioned above, regardless of women's gains in the labour market, the gender wage gap persists. However, there are other groups in the labour market that are also disadvantaged—members of visible minority groups, Aboriginal people and persons with disabilities. In addition, women who are members of these groups are, on average, doubly disadvantaged. In order to address some of these issues, the federal government introduced the *Employment Equity Act* (EEA) in 1986 with the purpose of achieving equality in the workplace and correcting conditions of disadvantage experienced by the four designated groups—women, visible minorities, Aboriginal peoples, and persons with disabilities. The 1986 EEA applied to all federally-regulated employers in the private sector employing 100 or more employees. The EEA was amended in 1995 and coverage was extended to the federal Public Service.

Members of Visible Minorities

Canadian Overview

The federal *Employment Equity Act* (EEA) defines members of visible minorities as persons, other than Aboriginal peoples, who are non-Caucasian in race or who are non-white in colour.

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[30] International Labour Organization (ILO). (2003). *Time for Equality at Work: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*. International Labour Conference, 91st Session 2003, Report I (B). Geneva: International Labour Office, p. 44.

[31] Pay Equity Commission of Ontario. *Newsletter*. No. 2. Vol. 7, October 1995, pp. 4-5.

In 2001, members of visible minorities accounted for 13.4 percent of the Canadian population, up from 4.7 percent in 1981 and 11.2 percent in 1991. According to Statistics Canada, immigrants who landed in Canada during the 1990s, and who were in the labour force in 2001, represented almost 70 percent of the total growth of the labour force over the decade. The majority of these immigrants were members of visible minorities.[32] If current immigration rates continue, it is possible that immigration could account for virtually all labour force growth by 2011.[33]

In this section we will address those aspects of wage inequity that are similar for visible minorities and for women. We will examine separately the situation of men and women in this group to identify any differences and determine their scope.[34]

Members of visible minorities are generally more educated than the rest of the population, as indicated in the Table 1.10.[35]

Members of visible minorities are better educated than the rest of the Canadian population.

Table 1.10: Distribution of the Labour Force by Level of Education, Canada 1996

Level of Education	Visible Minorities %		Total Population without Visible Minorities %	
	Women	Men	Women	Men
Less than Grade 9	14.0	8.7	12.2	12.1
Grade 9 to 13	33.3	33.6	38.5	36.3
Trade school diploma	1.9	2.2	2.7	5.2
Non-university studies	21.0	19.3	25.2	24.3
University studies	30.0	36.3	21.4	22.2
Bachelor's degree or higher	16.9	22.0	11.7	13.4

Source: Statistics Canada, *1996 Census of Population.*

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[32] Statistics Canada. (2003). 2001 *Census of Population. Canada's Ethnocultural Portrait: The Changing Mosaic.* Analysis series, p. 10.

[33] Statistics Canada. *The Daily.* Tuesday, February 11, 2003.

[34] Note that data are difficult to obtain, as often they are not broken down by sex.

[35] We are using data from the *1996 Census*, since the 2001 data were not yet available.

Relative to the rest of the population, there are proportionately more university graduates among visible minorities: 30 percent and 36.3 percent respectively for visible minority women and men compared with 21.4 percent and 22.2 percent.

Despite their level of education, visible minorities remain concentrated in relatively lower-skilled jobs.

Despite their level of education, female and male workers who are members of visible minorities are overrepresented in occupations that are relatively lower-skilled. While female workers who are members of visible minorities accounted for 10.3 percent of the total female labour force in1995,[36] they account for 18.9 percent of female Semi-skilled manual workers (for example, sewing machine operators) and 20.1 percent of female Other manual workers (unskilled labour in various types of manufacturing, for example).[37] However, they are underrepresented among Senior managers, Middle managers, and Professionals (Table 1.11).

Men, on the other hand, are overrepresented in the categories of Skilled sales and service personnel (such as real estate brokers, insurance brokers, chefs and cooks), Clerical personnel, and Other sales and services personnel (such as security guards, janitors, grocery clerks). Conversely, they are underrepresented in the categories of Senior managers, Skilled trade workers, and Supervisors—crafts and trade.

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[36] According to the Census definition, this refers more specifically to members of the population age 15 and older who, at the time of the Census, had worked since January 1, 1995.

[37] Statistics Canada, *1996 Census of Population*.

Table 1.11: Rate of Representation for Visible Minorities by Sex for Various Employment Equity Occupational Groups, Canada 1996

Occupational Group	VM Women/ Total Women %	VM Men/ Total Men %
Total	10.3	10.1
Senior managers	6.9	7.4
Middle managers	9.2	9.5
Professionals	8.8	12.2
Semi-professionals and technicians	8.2	9.9
Supervisors	8.8	11.0
Supervisors – crafts and trades	4.1	2.8
Administrative and senior clerical personnel	7.0	9.2
Skilled sales and services personnel	9.4	14.3
Skilled trade workers	12.8	6.4
Clerical personnel	10.5	14.3
Intermediate sales and service personnel	10.4	10.9
Semi-skilled manual workers	18.9	10.0
Other sales and service personnel	12.7	13.7
Other manual workers	20.1	8.9

Source: Statistics Canada, *1996 Census of Population.*

The disadvantage experienced by visible minorities in the labour market has been well noted. A recent Government of Canada publication notes that 58 percent of working-age immigrants had a post-secondary degree at landing, compared with 43 percent of the existing Canadian population.[38] The report also indicates that it can take up to 10 years for the earning of university-educated immigrant to catch up to those of their Canadian counterparts.[39] As the report states, "the labour market outcomes of immigrants are poor and worsening, even with higher levels of

Recent Government of Canada publication notes the worsening situation of immigrants.

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[38] Government of Canada. (2002). *Knowledge Matters: Skills and Learning for Canadians.* p. 51.

[39] Ibid., p. 51.

education and better skills, immigrants are now less successful than Canadian born workers with an equivalent education."[40]

Visible minorities earn less than the rest of the population.

This inequality in representation affects wages. Table 1.12 indicates that visible minority women are victims of double jeopardy in terms of wages. It also appears that the negative effect of being female is greater than that of being a visible minority. While women who are not members of a visible minority earn almost 30 percent less than their male counterparts, women and men who are members of a visible minority group also earn significantly less than men who are not members of a visible minority group. For example, visible minority men earn, on average, $7,014 less a year than other men. Women who are not members of a visible minority group earn $12,696 less a year. Visible minority women are the worst off, averaging $15,653 less per year, almost twice the average shortfall of visible minority men. This is what we mean by double jeopardy—if you are a woman you earn less but if you are a women and a visible minority you earn even less.

Table 1.12: Income Ratio for Visible Minority Workers by Sex, Full-Time, Full-Year Workers, Canada 1996

	Women		Men	
	Visible minorities	Rest of the Population	Visible Minorities	Rest of the Population
Average annual income ($)	27,465	30,422	36,104	43,118
Income ratio (%)	63.7	70.6	83.7	100.0

Source: Statistics Canada, *1996 Census of Population.*

Federal Public Service

In the federal Public Service, visible minorities represented 6.8 percent of the total federal Public Service workforce at the end of March 2002.[41] They are highly concentrated in two occupational categories which account for almost two thirds (64.2%) of their total number: Administration and Foreign Service (39.4%) and Administrative Support (24.8%). Visible minorities are also segregated within a few occupational groups in these categories. For example, 50 percent in the

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[40] Ibid., p. 51.

[41] Treasury Board of Canada Secretariat, *supra*, note 13, Table 3.

Administration and Foreign Service category can be found in two of the 14 occupational groups—Computer Systems (27.4%) and Program Administration (26.2%). Over 90 percent in the Administrative Support category can be found in one of five occupational groups—Clerical and Regulatory group (90.9%). As with women, members of visible minorities are significantly underrepresented in the Executive category (1.4%), which is well below the 4.5 percent for all males and 2.5 percent for all employees.

Table 1.13: Distribution of Federal Public Service Employees by Gender, Visible Minorities and Occupational Category, March 31, 2002

Occupational Group	Total (%)	Male (%)	Female (%)	Visible Minorities (%)
Executive	3,901 (2.5)	2,653 (3.5)	1,248 (1.5)	148 (1.4)
Scientific & Professional	21,156 (13.4)	12,933 (17.3)	8,223 (9.9)	2,301 (21.4)
Administration & Foreign Service	63,298 (40.2)	26,238 (35.1)	37,060 (44.8)	4,245 (39.4)
Technical	17,097 (10.9)	11,971 (35.1)	5,126 (6.2)	796 (7.4)
Administrative Support	33,602 (21.3)	5,649 (7.5)	27,953 (33.8)	2,675 (24.8)
Operational	18,456 (11.7)	15,403 (20.6)	3,053 (3.7)	607 (5.6)
Total	**157,510 (100.0)**	**74,847 (100.0)**	**82,663 (100.0)**	**10,772 (100.0)**

Source: Treasury Board of Canada Secretariat. (2003). Annual Report to Parliament: Employment Equity in the Federal Public Service 2001-02.

However, visible minorities in the federal Public Service fared better than other members of designated groups in terms of salary. Almost 45 percent (44.6%) of visible minorities earned more than $50,000 and 4.1 percent earned more than $80,000.

Visible minorities in the federal Public Service fared better than other members of designated groups in terms of salary.

Federal Private Sector

In organizations of 100 or more employees under federal jurisdiction, visible minorities are also represented very unequally among occupational groups. Generally, it can be said that their occupational distribution does not match their high level of education, except for the Professionals group. In 2001, when such workers represented 11.7 percent of the workforce in organizations under federal jurisdiction, they accounted for only 3.7 percent of Senior managers. However, they represented 17.5 percent of Administrative and senior clerical personnel, 16 percent of Professionals, and 13.8 percent of Clerical personnel.

Presence of double jeopardy for visible minority women.

The results for organizations of 100 or more employees under federal jurisdiction are fairly close to those of the labour market in general. As the authors of the *Annual Report: Employment Equity Act 2002* note:

> These findings also confirm the presence of double jeopardy for visible minority women against all men: while visible minority women remain behind all women in every salary band, all women also remain behind all men, creating a two-tier stratum.[42]

The wage ratio was 92.2 percent for visible minority male workers compared with other male workers and reached 95.1 percent for visible minority female workers compared with other female workers. The latter gap may seem small, but it must be noted that visible minority women are being compared with other women, whose average wages are already far below that of men.

Empirical Research

As has been done for women, many researchers have attempted to identify variables that explain wage inequity for visible minority workers.[43] A recent study[44] of particular interest uses

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[42] Human Resources Development Canada, *supra*, note 15, p. 64.

[43] Charles M. Beach and Christopher Worswick, (1993), "Is There a Double-Negative Effect on the Earnings of Immigrant Women?" *Canadian Public Policy – Analyse de Politiques*, 19(1), March 1993, pp. 36-53; Derek Hum and Wayne Simpson, (1999), "Wage Opportunities for Visible Minorities in Canada," *Canadian Public Policy – Analyse de Politiques*, 25(3), September 1999, pp. 379-394; Peter S. Li, (2001), "The Market Worth of Immigrants' Educational Credentials," *Canadian Public Policy – Analyse de Politiques*, 27(1), pp. 23-38; Robert Swidinsky and Michael Swidinsky, (2002), "The Relative Earnings of Visible Minorities in Canada: New Evidence from the 1966 Census," *Relations industrielles/Industrial Relations*, 57(4), pp. 630-659.

[44] Krishna Pendakur and Ravi Pendakur. (2002). "Colour My World: Have Earnings Gaps for Canadian-Born Ethnic Minorities Changed Over Time?" *Canadian Public Policy – Analyse de Politiques*, 28(4), pp. 489-511.

Census data over the period 1971 to 1996 to examine the situation of members of visible minorities born in Canada, thereby accounting for the effects of factors associated with immigrant status. The study found that members of visible minorities who were born in Canada make significantly less than the rest of the population and that the wage gap for visible minority workers increased between 1991 and 1996. The study concluded that personal characteristics that affect productivity (such as education, experience, knowledge of an official language) cannot account for the entire wage gap and, as is the case with women, a residual gap remains unexplained.

Can the residual gap be attributed to a devaluation of the jobs held by members of visible minorities as a result of prejudices or stereotypes in their regard? Are pay practices unfavourable to visible minority workers and do they affect jobs where they are overrepresented? How much bargaining power, if any, do they have with employers?

Many studies, especially recent ones, indicate that racism and prejudice are present in the labour market and have a negative impact on visible minority workers. In a 2001 survey conducted by EKOS, almost one quarter of visible minority respondents stated they had been harassed or discriminated against in the workplace in the previous year.[45] According to Andrew Jackson, large wage gaps between visible minority workers born and educated in Canada and other comparable Canadian workers are indicative of racial discrimination and not of a lack of skills and experience.

> These gaps contradict the view that gaps between workers of colour and other Canadian workers are not explained by racism, but rather by lack of Canadian skills and experience.[46]

Moreover, unionization among visible minority workers is low,[47] which, as with women, limits bargaining power in particular with respect to wages.

While all these factors point to systemic discrimination against members of visible minorities, to our knowledge there have been no substantive studies conducted in Canada establishing a correlation between jobs held largely by visible minorities and lower wages. However, Chapter 9 in this report does examine options for broadening the scope of pay equity legislation to include protection for members of visible minorities.

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[45] Andrew Jackson. (2002). *Is Work Working for Workers of Colour?* Canadian Labour Congress, Research Paper #18, p. 13.

[46] Ibid., p. 14.

[47] Ibid., pp. 16-18.

Aboriginal People

Canadian Overview

Aboriginal population growing faster than average.

In 2001, the Aboriginal population—which consists of First Nations, the Métis and the Inuit—represented 3.3 percent of the Canadian population. Between 1996 and 2001, the Aboriginal population increased by 22 percent compared to 3.4 percent growth in the non-Aboriginal population. Half of that growth can be attributed to factors such as a higher birth rate, which is 1.5 times greater than that of the Canadian population. As a result, the Aboriginal population is much younger that the rest of the population—one third of the Aboriginal population is under the age of 14 compared to 19 percent of the non-Aboriginal population.[48] Clearly, the demographics associated with the Aboriginal population have implications for future labour market growth.

Between 1996 and 2001, the gap between the educational attainments of the Aboriginal and non-Aboriginal population has decreased but this does not appear to be reflected in their occupational distribution or salary ranges and wages. For example, the proportion of Aboriginal persons with a trade school diploma rose to 16 percent, compared with 13 percent for the non-Aboriginal population. At the same time, 15 percent of Aboriginal persons had a college-level education versus 18 percent of non-Aboriginal persons.[49]

Aboriginals also remain concentrated in few occupational groups.

In the labour market, in 1996, Aboriginal persons were concentrated in a narrow range of occupational groups. In fact, close to half were in only two occupational groups (trades, transport and equipment operators and related occupations, and occupations unique to the primary industry) compared with 31 percent for non-Aboriginal male workers. Aboriginal women, on the other hand, were clearly overrepresented in sales and service occupations.[50]

With respect to wages, Aboriginal persons are also clearly disadvantaged compared with the rest of the population. Table 1.14, which provides data for all full-time and part-time workers in Canada, shows that the wage gap for Aboriginal female workers is extremely high and exceeds that of Aboriginal male workers, which is already considerable.

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[48] Statistics Canada. *The Daily*. January 21, 2003.

[49] Statistics Canada. (2003). *Education in Canada: Raising the standard*, 2001 Census (Analysis series).

[50] Statistics Canada. *1996 Census of Population*.

Table 1.14: Income Ratio for Aboriginal Workers by Sex, Canada 1996

	Women		Men	
	Aboriginal persons	Rest of the Population	Aboriginal persons	Rest of the Population
Average annual income ($)	14,655	20,275	19,775	32,161
Income ratio (%)	45.6	63.0	61.5	100.0

Source: Statistics Canada, *1996 Census of Population*.

Federal Public Service

70% of Aboriginal employees found in two occupational categories.

In the federal Public Service, Aboriginal people represent 3.8 percent of the total federal Public Service workforce.[51] They are highly concentrated in two occupational categories which accounts for almost 70 percent—Administration and Foreign Service (40.7%) and Administrative Support (27.5%). Aboriginal employees are also segregated within a few occupational groups in these categories. For example, more than two thirds of Aboriginal employees in the Administration and Foreign Service category can be found in two of the 14 occupational groups—Administrative Services (27.4%) and Program Administration (38.5%). Over 90 percent of Aboriginal employees in the Administrative Support category can be found in one of five occupational groups—Clerical and Regulatory group (92.9%). As with women and members of visible minorities, Aboriginal employees are significantly underrepresented in the Executive occupational category (1.6%), which is well below the 4.5 percent for all males and 2.5 percent for all employees.

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[51] Treasury Board of Canada Secretariat, *supra*, note 13.

Table 1.15: Distribution of Federal Public Service Employees by Gender, Aboriginal People and Occupational Category, March 31, 2002

Occupational Group	**Total** (%)	**Male** (%)	**Female** (%)	**Aboriginal People** (%)
Executive	3,901 (2.5)	2,653 (3.5)	1,248 (1.5)	97 (1.6)
Scientific & Professional	21,156 (13.4)	12,933 (17.3)	8,223 (9.9)	490 (8.2)
Administration & Foreign Service	63,298 (40.2)	26,238 (35.1)	37,060 (44.8)	2,434 (40.7)
Technical	17,097 (10.9)	11,971 (35.1)	5,126 (6.2)	442 (7.4)
Administrative Support	33,602 (21.3)	5,649 (7.5)	27,953 (33.8)	1,642 (27.5)
Operational	18,456 (11.7)	15,403 (20.6)	3,053 (3.7)	875 (14.6)
Total	**157,510** **(100.0)**	**74,847** **(100.0)**	**82,663** **(100.0)**	**5,980** **(100.0)**

Source: Treasury Board. (2002). *Annual Report to Parliament: Employment Equity in the Federal Public Service, 2001-02*, p. 44.

In the federal Public Service, Aboriginal persons are overrepresented in salary bands of less than $55,000—63.9 percent compared to 54.8 percent of all employees—and underrepresented in salary bands of $80,000 and more—2.1 percent versus 4.9 percent for all employees.[52]

Federal Private Sector

Majority of Aboriginal employees are concentrated in three occupations.

In organizations of 100 or more employees under federal jurisdiction, 21.5 percent of Aboriginal persons work in banking, 37.0 percent in transportation, 29.3 percent in communications, and 12.2 percent in other sectors.[53] Their distribution among various occupational groups reveals a major imbalance, as they are overrepresented in the three least-favoured socio-professional categories: Semi-skilled manual workers (2.5%), Other sales and service personnel (2.7%) and, in particular, Other manual workers (5.4%).

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[52] Treasury Board of Canada Secretariat, *supra*, note 13.

[53] Human Resources Development Canada, *supra*, note 15.

The above data clearly indicate that occupational segregation substantially reduces the range of occupations available to Aboriginal persons, both in the labour market in general and in workplaces under federal jurisdiction. Aboriginal workers are highly concentrated in the categories of occupations unique to primary industry, manual workers in secondary industry, and in sales and service occupations.

In organizations of 100 employees or more under federal jurisdiction, Aboriginal female workers—like visible minority women—are at double jeopardy in terms of wages. In fact, the average wage ratio in 2001 was 85.7 percent for Aboriginal women compared with women in general. It was 84.8 percent for Aboriginal men compared with men in general. Overall, the Aboriginal population has a level of education relatively lower than the rest of the population.

Empirical Research

Racism and prejudice.

The Pendakur and Pendakur[54] study indicates that even when education and other human capital characteristics are taken into account, average wages for Aboriginal persons remain significantly lower than those of non-Aboriginal persons. The residual gap is inexplicable. The study also indicates that, as with visible minorities, the relative earnings of Aboriginal persons improved slightly from 1971 to 1981, stagnated from 1981 to 1991, then declined from 1991 to 1996, which reflects the persistent nature of wage inequity. As with visible minorities, racism and prejudice negatively affect the situation of Aboriginal persons in the labour market. However, current analyses do not establish a link between a concentration of these workers in an occupation and the wages for that occupation. To our knowledge, this issue has yet to be addressed by researchers.

Persons with Disabilities

Canadian Overview

In 2001, the disability rate for Canadians between the ages of 15 and 64 was 9.9 percent.[55] A number of studies indicate that persons with disabilities face many prejudices and stereotypes in the workplace that affect their situation, particularly in terms of wages. According to the Conference Board of Canada:

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[54] Pendakur and Pendakur, *supra*, note 44.

[55] Statistics Canada. *A Profile of Disability in Canada, 2001.*

Attitudinal barriers and misperceptions

> Myths and stereotypes about people with disabilities persist in society, and workplaces merely mirror the larger world. People with disabilities and those who support their efforts to work in mainstream environments will tell you that the greatest single barrier they experience is not the disability itself but attitudinal barriers and misperceptions about their skills and their ability to add value in a workplace setting.[56]

According to a study by the Canadian Council on Social Development,[57] persons with disabilities are more likely to report being overqualified for their job than those without disabilities. This may be a result of the negative perceptions of some employers regarding this group's abilities. Unfortunately, there is relatively little statistical data available with respect to persons with disabilities, which represents an obstacle to in-depth analysis of their situation.

Relative to their labour market share of 6.3 percent, persons with disabilities are over represented in a few occupational groups. Female workers with disabilities are overrepresented in occupations such as family, marriage, and other related counsellors; health and social policy researchers; instructors and teachers of persons with disabilities; records and file clerks; and survey interviewers. Men with disabilities are overrepresented in occupations such as industrial electricians, welders, industrial mechanics, and cabinetmakers.[58]

As with other disadvantaged groups, women with a disability are subject to double jeopardy.

In 1998, the median hourly wage for men with disabilities was 95 percent of their male counterparts without disabilities, $16.19 versus $17.01. For women with and without disabilities, the median hourly wage was $12.00 and $13.95, respectively. As with visible minority and Aboriginal women, women with disabilities are subject to double jeopardy, with their wage representing only 86 percent of their female counterparts without a disability, and 70.5 percent of men without a disability.[59]

Federal Public Service

In the federal Public Service, persons with disabilities represent 5.3 percent of the total federal Public Service workforce.[60] They are highly concentrated in two occupational categories which account for 71.6 percent—Administration and Foreign Service (42.3%) and Administrative Support (29.3%). Persons with disabilities are also segregated within a few occupational groups in these categories. For example, 58.6 percent in the Administration and Foreign Service category can be found in two of the 14 occupational groups—Administrative Services (26.5%) and Program Administration (32.1%). Over 90 percent of employees with disabilities in the Administrative Support category can be found in one of five occupational groups—Clerical and Regulatory group (92.9%). As with all other designated group members, persons with disabilities are significantly underrepresented in the Executive occupational category (1.7%), which is well below the 4.5 percent for all males and 2.5 percent for all employees.

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[56] Ruth Wright in partnership with the Ministry of Citizenship, Government of Ontario. (2001). *Tapping the Talents of People with Disabilities: Guide for Employers*. The Conference Board of Canada. p. 5.

[57] Canadian Council on Social Development. (2002). *Disability Information Sheet*, No. 8. http://www.ccsd.ca/drip/research/

[58] Canadian Council on Social Development. (2003). *Expanding the Federal Pay Equity Policy Beyond-Gender*. Unpublished research paper commissioned by the Pay Equity Task Force, p. 30.

[59] Ibid., pp. 27, 37.

[60] Treasury Board of Canada Secretariat, *supra*, note 13, Table 3.

Table 1.16: Distribution of Federal Public Service Employees by Gender, Persons with Disabilities and Occupational Category, March 31, 2002

Occupational Group	Total (%)	Male (%)	Female (%)	Persons with Disabilities (%)
Executive	3,901 (2.5)	2,653 (3.5)	1,248 (1.5.1)	159 (1.9)
Scientific & Professional	21,156 (13.4)	12,933 (17.3)	8,223 (9.9)	718 (8.6)
Administration & Foreign Service	63,298 (40.2)	26,238 (35.1)	37,060 (44.8)	3,527 (42.3)
Technical	17,097 (10.9)	11,971 (35.1)	5,126 (6.2)	634 (7.6)
Administrative Support	33,602 (21.3)	5,649 (7.5)	27,953 (33.8)	2,439 (29.3)
Operational	18,456 (11.7)	15,403 (20.6)	3,053 (3.7)	854 (10.3)
Total	**157,510 (100.0)**	**74,847 (100.0)**	**82,663 (100.0)**	**8,331 (100.0)**

Source: Treasury Board of Canada Secretariat. (2003). *Annual Report to Parliament: Employment Equity in the Federal Public Service, 2001-02*, Table 3.

In the federal Public Service, 60.5 percent of persons with disabilities earn less than $50,000 compared to 54.8 percent of all employees. However, they are relatively better represented than women (2.6%) and Aboriginal people (2.1%) in salary bands of $80,000 and more—4.0 percent versus 4.9 percent for all employees.

Federal Private Sector

In organizations of 100 or more employees under federal jurisdiction, persons with disabilities are overrepresented among Other manual workers, Supervisors – crafts and trade, and Skilled trade workers. However, they are underrepresented in the categories of Managers, Professionals, and Semi-professionals and technicians.[61]

These data do not allow for a clear picture of the breakdown of occupations that persons with disabilities hold. However, one specific trait is identifiable: wage inequity.

In organizations under federal jurisdiction, the average wage gap between male workers with a disability and other male workers was 5.3 percent, consistent with the data for the labour market in general. However, for female workers with a disability, the wage gap was 3.3 percent compared with other female workers, which is well below the Canadian average (14% based on the median hourly wage) for women with and without a disability as mentioned above. Without more comprehensive statistics this outcome is difficult to explain.

Empirical Research

Little empirical research on wage gap for persons with disabilities.

It is difficult to explain wage gaps for workers with disabilities, since, to our knowledge, no comprehensive research has been conducted in Canada in this area. We do know, however, that workers with disabilities share two similarities with the three other disadvantaged groups: unfavourable occupational segregation and lower wages. However, it is difficult to venture any further and to interpret these data from a pay equity perspective.

Conclusion

This chapter provides a statistical portrait of the situation of women, Aboriginal people, persons with disabilities and members of visible minorities in the Canadian labour market as well as the federal Public Service and the federally-regulated private sector. While this is not a comprehensive portrait, it is clear that women and members of the other three disadvantaged groups share a number of labour market characteristics and constraints in common. We found that women continue to be concentrated in a few occupations and suffer from persistent wage inequity despite marked improvements in their human capital and labour market characteristics. Even when women enter non-traditional jobs, the data indicate that they continue to be paid less than their male counterparts.

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[61] Human Resources Development Canada, (2003), *supra*, note 15.

The three other disadvantaged groups share many similarities with women's labour market experience. However, women are victims of double discrimination, if they are Aboriginal, have a disability or are a member of a visible minority group. Men who are members of disadvantaged groups also appear to face discrimination in the labour market. On average, statistics indicate that they also are paid less than other workers.

We also found that, overall, under federal jurisdiction, in both the private and the public sector, the trends in occupational segregation and relative wages are similar to those prevalent in the rest of the labour market. The remaining chapters as well as our recommendations are largely based on the observation that wage inequity continues to be prevalent in the Canadian labour market as well as in the federal jurisdiction.

Chapter 2 – The Canadian Legislative Response

The Changing Concept of Equal Pay

Different legislative approaches in different jurisdictions.

In this chapter, we describe the history of legislation in Canadian jurisdictions which has been directed at the elimination of wage discrimination. From this account, it will be seen that Canadian governments have put into place a number of different kinds of legislative provisions and avenues of recourse in an attempt to address this issue.

Some of the stimulus for these initiatives came from the efforts of the international community, through the United Nations and its agencies, to address discrimination in wages as part of a broader program intended to discourage all kinds of discrimination on the basis of a wide range of grounds, including sex and race. Though Canadian governments have not responded consistently to the commitments made by Canada in international forums, the period since 1950 has seen a series of legislative experiments with statutory mechanisms designed to eliminate discrimination in pay policies.

Canadian legislation focuses almost entirely on gender-based wage discrimination.

A number of the international documents to which Canada is a signatory are formulated in broad terms, and do not single out wage discrimination on the basis of gender for special attention. In practice, Canadian equal pay legislation, with few exceptions, has been addressed to the issue of wage discrimination against women. As we have seen in Chapter 1, the problem of gender-based discrimination has distinctive characteristics. It has proved possible to isolate this phenomenon and to identify its links with occupational segregation and the invisibility of certain aspects of female work.

Members of other disadvantaged groups also face wage discrimination.

Though analysis of wage discrimination with respect to other disadvantaged groups has not yet reached the stage of comprehensiveness and specificity which has been achieved in the case of discrimination on the basis of gender, it should not be forgotten that Canada has entered into international commitments to eliminate discrimination on a wide range of grounds. In Canada, members of visible minorities, Aboriginal people and persons with disabilities, as well as women, have been identified as groups who have suffered historic disadvantage in the workplace. The material presented in Chapter 1 of this report indicates that, whatever the origins of the problem may be, there is a wage gap which adversely affects members of visible minorities, Aboriginal people and persons with disabilities. In order to fulfill the requirements of the international covenants into which Canada has entered, it will be necessary that pay equity legislation provide means for confronting wage discrimination on grounds other than gender.

Assumption: men are the primary breadwinners in families.

In the first half of the 20th century, the focus in the discussion of equal pay was on the existence of differential pay rates for women and men doing the same jobs. Though the origins of this kind of wage discrimination are disputed, it has been attributed to the idea of the family wage—the assumption that men will be the primary breadwinners of families.[1] In North America, the first expressions of concern about pay policies based on "men's rates" and "women's rates" have been traced to the fear that the wages of men would be depressed following the two world wars, as women had taken over many jobs usually done by men.

1948: United Nations *Universal Declaration of Human Rights*.

In any case, by the time the United Nations had been established, this discussion had evolved to the point that the *Universal Declaration of Human Rights* in 1948[2] contained the provision that

> **Article 23**
>
> (2) Everyone, without any discrimination, has the right to equal pay for equal work.

1950s—equal pay legislation enacted by most Canadian governments.

The commitment made by Canada to this proposition led, in the 1950s, to the enactment of equal pay legislation by most Canadian governments, including the federal government.[3] Most of this legislation took the form of provisions contained in employment standards legislation, and was enforceable through the inspection system associated with such legislation.

An example of such legislation is found in a former British Columbia statute, the *Equal Pay Act*:[4]

> 3(1) No employer and no person acting on his behalf shall discriminate between his male and female employees by paying a female employee at a rate of pay less than the rate of pay paid to a male employee employed by him for the same work done in the same establishment.

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[1] Alice Kessler-Harris. (1990). *A Woman's Wage: Historical Meanings and Social Consequences*. Lexington, Ky.: University Press of Kentucky.

[2] United Nations. G.A. Res. 217 (III), UN GAOR, 3d Sess., Supp. No. 13, U.N. Doc. A/810 at 71 (1948), Article 23, paragraph 2.

[3] Canada. *An Act to Promote Equal Pay for Female Employees* (1956), 4-5 Elizabeth II, Chapter 38.

[4] British Columbia. *Equal Pay Act*. R.S.B.C. 1960, c. 131, s. 3(1).

From the beginning, there was some variation with respect to the scope of comparisons which could be made in these "equal pay for equal work" provisions. Saskatchewan's *Equal Pay Act,*[5] for example, referred to "work of a comparable character."

Current versions of this kind of legislation often refer to work which is "similar" or "substantially the same." The current version of the provision in Saskatchewan's *Labour Standards Act*[6] reads as follows:

> 17 (1) No employer or person acting on behalf of an employer shall discriminate between his male and female employees by paying a female employee at a rate less than the rate of pay paid to a male employee, or vice versa, where such employees are employed by him for similar work which is performed in the same establishment under similar working conditions and the performance of which requires similar skill, effort and responsibility, except where such payment is made pursuant to a seniority system or merit system.

The following provision is taken from Ontario's *Employment Standards Act, 2000:*[7]

> 42.(1) No employer shall pay an employee of one sex at a rate of pay less than the rate paid to an employee of the other sex when
>
> (a) they perform substantially the same kind of work in the same establishment;
>
> (b) their performance requires substantially the same skill, effort and responsibility;
>
> (c) their work is performed under similar working conditions.

Legislation based on equal pay for equal work failed to eradicate wage discrimination.

Though legislation based on the principle of equal pay for equal work was regarded as an important achievement for women, many argued that it did not represent a complete answer to the problem of discrimination against women in the matter of compensation. Though these "equal pay for equal work" provisions prohibited the practice of paying men and women different wages when they were doing the same or similar jobs, critics charged that they were not effective in preventing employers from placing a different value on work which could be compared in terms of the skill, effort or responsibility required, or the conditions under which the work was done, and they did not force a careful examination of the less visible aspects of jobs which are often done by women. Thus, the argument went on, they failed to address the systemic form of discrimination represented by occupational segregation, with the attendant assumptions made about the nature of women's work.

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[5] Saskatchewan. *Equal Pay Act.* R.S.S. 1953, c. 294, s. 3(1).

[6] Saskatchewan. *Labour Standards Act.* R.S.S. 1978, c. L-1.

[7] Ontario. *Employment Standards Act.* S.O. 2000, c. 41, s. 42(1). The provision has been in this form since 1970.

This critique of existing forms of equal pay legislation led to a new generation of provisions intended to address wage discrimination in a more thorough and comprehensive way.

Canada's International Obligations

ILO Convention No. 100

Canada is a party to legally binding international covenants and conventions.

As a participant in the international community through the United Nations and the International Labour Organization, Canada is a party to a number of legally binding international covenants and conventions respecting human rights, political and civil rights and economic, social and cultural rights. These international human rights instruments expressly commit Canada to eliminating sex-based discrimination in employment and, in particular, to eliminating sex-based wage discrimination.

> [...] Historically [...] Canada has responded by enacting domestic equal pay legislation in order to meet those binding obligations under international law.
>
> Mary Cornish, Elizabeth Shilton and Fay Faraday. (2002). *Canada's International and Domestic Human Rights Obligations to Ensure Pay Equity: Obligations to Design an Effective, Enforceable and Proactive Federal Pay Equity Law.* Unpublished research paper commissioned by the Pay Equity Task Force, p. 6.

Convention No. 100: the Convention Concerning Equal Remuneration for Men and Women for Work of Equal Value.

The International Labour Organization (ILO), a tripartite agency of the United Nations which seeks to promote social justice and workplace rights, adopted *Convention No. 100, the Convention*

Concerning Equal Remuneration for Men and Women for Work of Equal Value[8] in 1951.

> Article 2.1 of the Convention reads as follows:
>
> 1. Each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women for work of equal value.

1972: Canada ratifies Convention No. 100.

The Convention was ratified by Canada in 1972, as part of the response of the Government of Canada to the report of the Royal Commission on the Status of Women. In ratifying the Convention, the Canadian government not only committed itself to making efforts to ensure that legislation which would advance this principle was put in place at both federal and provincial levels, but entered into an obligation described in Article 3 in these terms:

> Where such action will assist in giving effect to the provisions of this Convention measures shall be taken to promote objective appraisal of jobs on the basis of the work to be performed.

Thus, the Convention appears to contemplate that some sort of job evaluation or assessment system will be used to arrive at an objective measure of the nature of work associated with various jobs. It also contemplates that this systematic analysis of jobs will be actively promoted.

It has been argued that, in the context of the discussion which led to the adoption of the Convention by the ILO, the term "equal value" was not intended to be a distinct concept from the "equal pay for equal work" idea embodied in the *Universal Declaration of Human Rights*.[9] Whatever the tone of the debate when it was drafted, by the time Convention No. 100 became part of the currency of public discussion, and certainly by the time it was ratified in Canada in 1972, the phrase "equal pay for work of equal value" was taken to represent a broader concept than "equal pay for equal work." It is clear that the ILO currently takes the position that measures formulated in terms exclusively of equal pay for equal work do not satisfy the requirements of the Convention.[10]

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[8] International Labour Organization (ILO). General Conference, 34th Session (1951). For a full discussion of Canada's international obligations in this area, see Mary Cornish, Elizabeth Shilton and Fay Faraday, *Canada's International and Domestic Human Rights Obligations to Ensure Pay Equity: Obligations to Design an Effective, Enforceable and Proactive Federal Pay Equity Law*. Unpublished research paper commissioned by the Pay Equity Task Force, October 2002.

[9] Thomas Flanagan. (1987). "Equal Pay for Work of Equal Value: An Historical Note." 22 *Journal of Canadian Studies* 5.

> Measures formulated exclusively in terms of equal pay for equal work do not satisfy the requirements of Convention No. 100.
>
> ILO Committee of Experts on the Application of Conventions and Resolutions. (2002). *Individual Observation Concerning Convention No. 100,* 1951 – Mexico.

> Discrimination at work will not vanish by itself; neither will the market, on its own, take care of its elimination.
>
> International Labour Conference, 91st Session. (2003). *Time for Equality at Work: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work.*

International Covenant on Economic, Social and Cultural Rights

1976: Canada ratifies *International Covenant on Economic, Social and Cultural Rights.*

In 1966, the United Nations adopted the *International Covenant on Economic, Social and Cultural Rights,*[11] which was ratified by Canada in 1976. Article 7 of this Covenant conflated the language of "equal pay for equal work" and "equal pay for work of equal value":

> **Article 7**
>
> The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:
>
> a) Remuneration which provides all workers, as a minimum, with:

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[10] ILO Committee of Experts on the Application of Conventions and Resolutions. (2002). *Individual Observation Concerning Convention No. 100*, 1951 – *Mexico.*

[11] United Nations. *International Covenant on Economic, Social and Cultural Rights.* 16 December 1966, 993 U.N.T.S. 3.

> i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those of men, with equal pay for equal work.

It should be noted that, though Article 7 alludes specifically to wage discrimination against women, a more general provision in Article 2 of the Covenant commits the signatories to

> undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Signatories obliged to take active and progressive remedial action.

The *Covenant on Economic, Social and Cultural Rights* also obliged the states subscribing to it to take active and progressive action to implement these rights. In the third review by the United Nations Committee on Economic, Social and Cultural Rights of Canada's compliance with the Covenant, issued in 1999,[12] the Committee expressed some concern about

> The inadequate legal protection in Canada of women's rights guaranteed under the Covenant, such as the absence of laws requiring employers to pay equal remuneration for work of equal value in some provinces and territories, restricted access to civil legal aid, inadequate protection from gender discrimination afforded by human rights laws and the inadequate enforcement of those laws.

International Covenant on Civil and Political Rights

1976: Canada ratifies *International Covenant on Civil and Political Rights*.

In 1966, the United Nations also adopted the *International Covenant on Civil and Political Rights*,[13] which was ratified by Canada in 1976, and which contained a number of general protections for human rights. Article 26, for example, reads as follows:

> **Article 26**
>
> All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as [...]- sex [...].

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[12] United Nations. *Report to the Eighteenth and Nineteenth Session*. UN ESCOR, 1999, Supp. No. 2, UN Doc. E/1999/22, at paragraph 426.

[13] United Nations. *International Covenant on Civil and Political Rights*. 16 December 1966, 999 U.N.T.S. 171, ratified by Canada in 1976.

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

1981: Canada ratifies *the Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW).

The international commitments described to this point dealt with wage discrimination against women in the context of broad-based efforts to combat discrimination and unfair working conditions for many groups or, in the case of ILO *Convention No. 100*, addressed unequal pay as a discrete problem. The *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW),[14] adopted by the United Nations in 1979 and ratified by Canada in 1981, marked an effort to look at the barriers to equality for women in a coherent and systematic way. Based on the premise that

> the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields[,]

CEDAW set out a variety of principles and measures designed to eliminate discrimination against women "in all its forms and manifestations." The document urges signatories to take active measures to carry out the goals of CEDAW. Article 11 refers directly to wage discrimination:

> **Article 11**
>
> 1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality with men and women, the same rights, in particular:
>
> [...]
>
> d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work.

Beijing Declaration and Platform for Action

1995: Canada signs the *Beijing Declaration* and the *Platform for Action*.

The principles outlined in CEDAW were elaborated and carried further in the documents emerging from the United Nations Fourth World Conference on Women held in 1995. These documents, the *Beijing Declaration* and the *Platform for Action*,[15] were adopted by the United Nations and signed by Canada in the same year. The principles and strategies laid out in these documents, insofar as they dealt with the employment situation of women, were based on the premise that equality in employment is not a luxury but a prerequisite for a sustainable world economy.

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[14] United Nations. *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW). G.A. Res. 34/180, GAOR, 34th Sess., Supp. No. 46 at 193 (1979). In February 2002, Canada presented its fifth report to the United Nations on its progress towards meeting the requirements of CEDAW, covering the years 1994-98.

[15] United Nations Fourth World Conference on Women. *Report of the Fourth World Conference on Women.* (1995). Chap. I, Resolution 1, Annex I *(Beijing Declaration)* and Annex II *(Beijing Platform for Action)*. Beijing: United Nations Publications, Sales No. E.96.IV.13, 4-15 September 1995.

To improve the condition of women, the signatory governments committed themselves, among other things, to:

- Enact and enforce legislation to guarantee the rights of women and men to equal pay for equal work or work of equal value.[16]
- Safeguard and promote respect for basic workers' rights, including [...] equal remuneration for men and women for work of equal value and non-discrimination in employment, fully implementing the conventions of the International Labour Organization in the case of States party to those conventions [...].[17]
- Increase efforts to close the gap between women's and men's pay, take steps to implement the principle of equal remuneration for equal work of equal value by strengthening legislation, including compliance with international labour laws and standards, and encourage job-evaluation schemes with gender-neutral criteria.[18]

Employers, unions and civil society institutions must collaborate.

In addition to urging governments to take action on the objectives articulated in the *Beijing Declaration* and the *Platform for Action*, the Conference called on employers, trade unions and the institutions of civil society to play a role in the achievement of these objectives, and enumerated detailed steps which organizations and institutions could take to assist in the elimination of discrimination against women. The documents referred to collective bargaining and adjudicative mechanisms as important supports in the removal of discriminatory barriers for women in their employment.

> We are determined to [...] Promote women's economic independence, including employment, and eradicate the persistent and increasing burden of poverty on women by addressing the structural causes of poverty through changes in economic structures.
>
> *Beijing Declaration,* 15 September 1995, paragraph 26.

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[16] *Platform for Action.* Strategic objective F.1, paragraph 165(a).

[17] *Platform for Action.* Strategic objective F.2, paragraph 166(l).

[18] *Platform for Action.* Strategic objective F.5, paragraph 178(k).

"Beijing +5" Review

Progress review five years after Conference.

Among the recommendations from the Beijing Conference which were adopted by the General Assembly was the requirement for a review of progress towards implementing the recommendations after a five-year period. This "Beijing+5" Review was carried out in 2000, and the conclusions from the review were adopted by the General Assembly in a special session in November of that year.[19]

This resolution recognized that

> Many women with comparable skills and experience are confronted with a gender wage gap and lag behind men in income and career mobility in the formal sector [of the economy]. Equal pay for women and men for equal work, or work of equal value, has not yet been fully recognized.[20]

Those supporting the resolution, including Canada, called upon the signatories to

> Initiate positive steps to promote equal pay for equal work or work of equal value and to diminish differentials in incomes between women and men.[21]

ILO Declaration of 1998

Reviewed and reconfirmed earlier instruments.

In 1998, the ILO issued the *Declaration on the Fundamental Principles and Rights at Work and its Follow-Up*, which was characterized in the document as a "renewed, solemn political commitment by the ILO and its member States to respect, promote and realize" the rights of workers. The Declaration reviewed and reconfirmed a number of earlier instruments; though Canada had not ratified all of these, there was reference to Convention No. 100, and also the 1948 *Convention on Freedom of Association and Protection of the Right to Organize,* both of which had been ratified. The Declaration also urged member states of the ILO to make efforts to protect and advance the fundamental rights of workers enshrined in conventions which they had not ratified.

Revisiting these issues at the 2003 session of the International Labour Conference, the ILO again drew attention to the importance of the elimination of wage discrimination:

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[19] United Nations. *Further actions and initiatives to implement the Beijing Declaration and Platform for Action.* GA Res. S-23/3, UN GAOR, 23rd Special Sess. UN Doc. A/RES/S-23-3 (2000).

[20] Ibid., paragraph 21.

[21] Ibid., paragraph 82(h).

> The elimination of discrimination in remuneration is crucial to achieving genuine gender equality and promoting social equity and decent work. No lasting improvements in the economic status of women and other discriminated-against groups can be expected as long as the market rewards their time at a lower rate than that of the dominant group.[22]

The ILO made particular mention of the principle of equal pay for work of equal value in this context:

> Equal remuneration for work of equal value is integral to the fundamental principle of the elimination of discrimination in employment and occupation and has been a concern of the ILO since its founding.[23]

> As new international instruments have been developed and ratified over the past century, they have continued to provide further guidance with respect to both the substantive meaning of non-discriminatory wages and the concrete steps that must be taken in order to achieve that objective.
>
> Mary Cornish, Elizabeth Shilton and Fay Faraday. (2002). *Canada's International and Domestic Human Rights Obligations to Ensure Pay Equity: Obligations to Design an Effective, Enforceable and Proactive Federal Pay Equity Law.* Unpublished research paper commissioned by the Pay Equity Task Force, October 2002, p. 6.

Pay equity, dignity and economic self-sufficiency of women linked with the welfare of communities and nations.

At the international level, the efforts to address wage discrimination have been characterized by ever stronger statements of commitment to the principle of equality as a fundamental right, and by a focus on the link between pay equity, the dignity and economic self-sufficiency of women, and the welfare of communities and nations. International bodies have been forced to acknowledge that progress towards the objective of equality has been slow, but this has not prevented the international community from reaffirming, on numerous occasions, that it remains a goal which should be accorded a high priority.

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[22] International Labour Organization (ILO). International Labour Conference, 91st Session. *Time for Equality at Work: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work,* 2003, para. 150, p. 48.

[23] Ibid., p. 87.

Domestic Significance of International Commitments

From this brief review, it will be evident that Canada has, on a number of occasions, signified its acceptance of international accords which recognize the principle of equal pay for work of equal value, and which represent a commitment to implement measures, such as gender-neutral job evaluation exercises, to ensure that the principle is carried out in practice.

Canada is viewed as a country which should honour its commitments rapidly.

By ratifying these international covenants, Canada has bound itself to uphold rights articulated by the international community. Though there is of necessity some variation in the speed at which signatory countries are expected to proceed towards the full realization of the goals expressed in these documents, Canada is viewed as a country which should be able to make relatively rapid progress in this respect. In a paper prepared for the Pay Equity Task Force, Mary Cornish, Elizabeth Shilton and Fay Faraday commented:

> UN Covenants and ILO Conventions are intended to impose *universal* commitments and *universal* standards. The intention is that all countries will be able to ratify and implement the instruments regardless of the particular country's stage of economic development or its social or economic system. The universal standards are intended to set goals for national policy and to provide a broad framework for national action.
>
> Necessarily related to the concept of universality is that of *flexibility*. Universal standards are developed giving specific attention to the need for flexibility to take account of variations in national circumstances, conditions and practices. What each country is expected to achieve is measured against the particular economic, social, political and legal development of that country. In this respect, because Canada is a stable country with a high standard of living, the UN Committee on Economic, Social and Cultural Rights expects Canada to achieve a "high level of respect for all Covenant rights."
>
> Flexibility is not intended to undermine the concept of universality, however, because all the international instruments are aimed at promoting *continuing and progressive development* within all of the member states towards achieving the universal standards. Although individual countries may

> move towards achieving the universal standards at different rates, the ultimate goal remains the same for all.[24]

Though there has been discussion in these international documents of job evaluation and other methods for advancing the objective of equal treatment, the focus of these commitments is on the elimination of wage discrimination and the achievement of equality, not on the process. The right which is articulated in the international instruments is a right to be paid equally, rather than a right to access to any particular procedure.

In Canada, constitutional barriers exist to binding provincial governments to federal commitments.

It must be acknowledged, of course, that these international covenants cannot have any direct application under Canadian law unless they have been embodied in a legislative enactment within Canada. In the case of provincial legislation, there are obvious constitutional barriers to any binding requirement that commitments entered into by the federal government on behalf of Canada be carried out at the provincial level. Even at the federal level, it is necessary for a government to enact legislation embodying the obligation entered into internationally for it to take effect. Though the Supreme Court of Canada has enunciated this principle on a number of occasions,[25] the Court has made it clear that the international obligations Canada has assumed are relevant to the context in which Parliament enacts legislation and to the interpretation of that legislation in the courts.

The Federal Plan for Gender Equality

Furthermore, in preparing for the Beijing Conference, the Government of Canada stated its understanding of the nature of its international obligations by formulating a plan to demonstrate how it would implement the principles of gender equality contained in United Nations and other international documents. In *Setting the Stage for the Next Century: The Federal Plan for Gender Equality*,[26] the federal government acknowledged that wage discrimination had not been eliminated in federally-regulated workplaces, despite pay equity legislation, and identified a number of ways to rectify this situation:

1995: Federal Plan for Gender Equality

- exploring ways to encourage greater union involvement in the implementation of pay equity, assisting small employers to implement pay equity and improving the federal Equal

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[24] Mary Cornish, Elizabeth Shilton and Fay Faraday, *supra*, note 8, p. 29.

[25] *Baker* v. *Canada (Minister of Citizenship and Immigration)*, [1999] 2.S.C.R. 817, at 860-861; *R.* v. *Sharpe*, [2001] 1 S.C.R. 45, at 140-141; *114957 Canada Ltée (Spraytech, Société d'arrosage)* v. *Hudson (Town)*, [2001] 2 S.C.R. 241, at 266-267.

[26] Status of Women Canada. (1995). *Setting the Stage for the Next Century: the Federal Plan for Gender Equality.* Ottawa.

Pay Program, including examining improvements to existing pay equity provisions under the *Canadian Human Rights Act*;

- sponsoring public education, promotional and information initiatives to help counter the growing "backlash" phenomenon, based on misperceptions of women's relative equality gains in the workplace;
- encouraging the review of female-dominated occupational profiles to improve recognition and remuneration for all skills used in a job;
- promoting pay equity by improving recognition of the experience acquired in unremunerated work, including household management, as skill requirements applicable in the workplace.

Gender-Based Analysis: A Guide for Policy-Making

Like the *Platform for Action* coming out of the Beijing Conference, and like the *Commonwealth Plan of Action on Gender and Development*,[27] the *Federal Plan for Gender Equality* took an important step by acknowledging the importance of gender-based analysis in the formulation and assessment of government policies influencing the lives of women. Indeed, the federal government followed up the *Federal Plan for Gender Equality* with a working document called *Gender-Based Analysis: A Guide for Policy-Making*,[28] which was intended to give policy-makers at the federal and provincial levels assistance in evaluating the gender impact of all government policies.

> The Commonwealth works towards a world in which women and men have equal rights and opportunities in all stages of their lives to express their creativity in all fields of human endeavour, and in which women are respected and valued as equal and able partners in establishing the values of social justice, equity, democracy and respect for human rights. Within such a framework of values, women and men will work in collaboration and partnership to ensure people-centred development for all nations.
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> Commonwealth Plan of Action on Gender and Development. (1995). www.thecommonwealth.org/gender

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[27] Commonwealth Secretariat website at http://www.thecommonwealth.org/gender/htm/whatwedo/why/poa.htm

[28] Status of Women Canada. (1998). *Gender-Based Analysis: A Guide for Policy-Making*. Ottawa.

In its fifth report to the United Nations committee considering Canada's compliance with CEDAW, submitted early in 2002, the government conceded that gender-based analysis is "still in its infancy."[29] The government did, however, list a number of initiatives aimed at training policy-makers to engage in gender-based analysis and at developing sources of information for use in this respect.[30]

More specific legislation and sophisticated tools needed.

The strategies outlined in the *Federal Plan for Gender Equality*, such as gender-based analysis, do not take the place of specific legislative initiatives designed to establish clear requirements for achieving pay equity. They represent an acknowledgment that pay equity measures are part of a context in which women face discrimination on a number of fronts, and that it is necessary to develop more sophisticated tools for identifying and confronting these various forms of discrimination.

Canada's violation of its international commitments could lead to international sanctions.

In a variety of international settings, Canada has undertaken commitments to advance the goal of equal status for women and, in particular, to work towards the elimination of wage discrimination based on sex. Though these covenants do not manifest themselves directly as legal obligations within Canada, they represent an important body of principles which Canada has accepted as standards which this country is obliged to meet. Violations of these standards expose Canada to the sanctions available to the bodies, such as the United Nations, which represent the international community.

Legislation in Canada

Labour Standards Legislation

Equal pay legislation first appeared in the form of labour standards.

We have already alluded to the inclusion in Canadian jurisdictions of equal pay for equal work provisions in labour standards legislation. In the case of the federal jurisdiction, equal pay provisions first appeared as part of legislation covering other workplace issues. The following provision was included in the *Canada Labour Code* in 1970:[31]

> 38.1(1) No employer shall establish or maintain differences in wages between male and female employees, employed in the same establishment,

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[29] Canada. (2002). *Convention on the Elimination of All Forms of Discrimination Against Women: Fifth Report of Canada Covering the Period April 1994-March 1998.* Paragraph 68. Ottawa: Public Works and Government Services Canada.

[30] Ibid., at paragraph 68. Reference is made, for example, to materials entitled *Economic Gender Equality Indicators, Finding Data on Women: A Guide to the Major Sources at Statistics Canada and Guide to Gender-Sensitive Indicators.*

[31] Canada. *Canada Labour* Code. R.S.C. 1970, c. 17 (2nd Supp.), s. 38.1.

> who are performing, under the same or similar working conditions, the same or similar work on jobs requiring the same or similar skill, effort and responsibility.

The discussion of equal pay had originally emerged as a component of efforts to improve the working conditions and living standards of workers around the world. At least since the efforts of 19th century reformers to alter the working conditions of women and children, fairness to female workers had been a theme in the pressure for enhanced employment standards. It is not thus surprising that the commitment to the principle of equal pay for equal work first found its expression in the context of this type of legislation.

Human Rights Legislation

1960s and 70s: pay equity emerges as a human rights issue.

In the 1960s and 1970s, the analysis of the equal pay issue took place increasingly within the framework of a broader interest in the entrenchment in legislation of human rights principles. This was consistent with the framework within which international bodies articulated equality principles. It also reflected a drive within Canada to enshrine in legislative and constitutional form basic ideas of equality. In the late 1950s, for example, Ontario enacted the *Fair Employment Practices Act*,[32] which proscribed discrimination in the employment context. Reflecting the *Universal Declaration of Human Rights*, it contained the following provision:

> 3. No employer or person acting on behalf of an employer shall refuse to employ or to continue to employ any person, or discriminate against any person in regard to employment or any term or condition of employment because of his race, creed, colour, nationality, ancestry or place of origin.

It will be noted that, though the terms of this provision are broad, they do not make reference to discrimination on the basis of gender.

Quebec: *Charter of Human Rights and Freedoms* (1975).

In 1975, the Quebec government enacted the *Charter of Human Rights and Freedoms*,[33] which contained the following widely framed direction about equal pay:

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[32] Ontario. *Fair Employment Practices* Act. R.S.O. 1960, c. 132. This statute was repealed and much of its substance incorporated into Ontario's *Human Rights Code*, S.O. 1961-62, c. 93.

[33] Quebec. *Charter of Human Rights and Freedoms*. S.Q. 1975, c. C-12.

> 19. Every employer must, without discrimination, grant equal salary or wages to the members of his personnel who perform equivalent work at the same place.

The Government of Quebec has more recently enacted more specialized legislation directed at the issue of pay equity, which we will be examining in more detail, and the process set out in this legislation, where it applies, now replaces the complaint process in the equal pay article of the Charter; but it is clear that even at the time of the enactment of the Charter, there was an intention to reinforce the principle of equal pay for work of equal value, not only for women, but for all workers.

Complaint-Based Legislation

1977: *Canadian Human Rights Act.*

In 1977, the federal government passed the Canadian Human Rights Act, including section 11, the pay equity provision which is the object of our review. The operation of this provision will be examined in more detail in Chapter 3. The core of section 11 is contained in the following statement:

> 11. (1) It is a discriminatory practice for an employer to maintain differences in wages between male and female employees employed in the same establishment who are performing work of equal value.

Like the Quebec Charter, the *Canadian Human Rights Act* provides recourse, through its complaint process, to those who wish to establish that a violation of the legislation has occurred. By lodging a complaint, a complainant can invoke the power of the Canadian Human Rights Commission to investigate complaints and to refer them for adjudication to the Canadian Human Rights Tribunal.

Territorial legislation.

The Northwest Territories is subject to the *Canadian Human Rights Act*, which will continue to apply in Nunavut until the Government of Nunavut decides to enact new legislation. In the Yukon, the public sector is subject to a provision in the *Human Rights Act*[34] which states that it is discriminatory for an employer to establish or maintain a difference in wages where employees are performing work of equal value "if the difference is based on any of the prohibited grounds of discrimination." Thus, like the Quebec Charter, the Yukon statute purports to reach wage discrimination based on grounds other than gender.

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[34] Yukon. *Human Rights Act*. S.Y. 1987, c. 3, s. 14.

General human rights statutes as a basis for pay equity complaints.

During the 1970s and 1980s, most provinces enacted human rights statutes containing general anti-discrimination provisions. It should be noted that, even in the absence of any specific reference to equal pay, the possibility exists that these provisions could be used to found a complaint alleging discrimination in the form of improper differences in pay. Thus, in jurisdictions which do not have pay equity legislation, there may be recourse through the more general clauses of human rights statutes for complaints based, presumably, on any of the prohibited grounds listed in the legislation. This is the basis on which, on at least two occasions, the courts have permitted provincial human rights commissions to proceed with the investigation of pay equity complaints based on gender.[35]

Proactive Legislation

Criticism of the *Canadian Human Rights Act* led to provincial proactive legislation.

The complaint-based regime in place under legislation like the *Canadian Human Rights Act* has been the subject of considerable criticism, and many of the reasons for this will be examined in Chapter 3. In several provinces, these criticisms led to the passage of legislation requiring positive action on the part of employers and other actors. This type of legislation is often characterized as "proactive legislation," and typically provides that employers must be prepared to demonstrate that they have taken systematic steps to analyse the work done by their employees and to eliminate any discriminatory wage practices which are revealed as a result. The features of proactive legislative models will be discussed in detail in Chapter 5.

Manitoba

1986: Manitoba first to enact proactive pay equity law.

The first jurisdiction to pass proactive legislation was Manitoba which, in the mid-1980s, enacted the *Pay Equity Act*.[36] Under this statute, which applies only to the provincial public sector, an obligation was placed on employers to ensure that there would be no difference between the wages of male and female employees performing work "of equal or comparable value." The process for eliminating discrimination involved negotiation with the unions representing public sector employees. One comparison process was to occur "throughout the Civil Service" and another in each Crown entity or external public-sector agency, including health care agencies and universities. The Act does not cover municipal governments or independent boards and commissions.

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[35] *Canada Safeway* v. *Saskatchewan Human Rights Commission* (1999), 178 Sask. R. 296 (Sask. Q.B.); *Nishimara* v. *Ontario (Human Rights Commission)* (1989), 70 O.R. (2d) 347 (Div. Ct.).

[36] Manitoba. *Pay Equity Act*. S.M. 1985-86, c. 21, C.C.S.M., c. P13.

Manitoba's Pay Equity Bureau.

The Pay Equity Bureau was established to provide advice and assistance with the process of arriving at a pay equity settlement. The agency was disbanded in 1994 after all of the public-sector entities covered by the statute had implemented a pay equity plan. The Manitoba Department of Labour continues to provide information and advice on a limited basis, but there is no specific responsibility for monitoring the maintenance of the pay equity settlements which were reached.

Capping of settlements unconstitutional.

One aspect of the Manitoba legislation was challenged on the basis that it constituted a violation of Section 15 of the *Canadian Charter of Rights and Freedoms*. In *Manitoba Council of Health Care Unions* v. *Bethesda Hospital*,[37] the Manitoba Court of Queen's Bench examined the provision of the legislation which placed a cap on pay equity settlements of 1 percent of payroll over each of four years. The implication of this provision was that no settlement could in practice exceed 4 percent of payroll. The Court found that this could permit discrimination to continue in those cases where the amount necessary to eliminate discrimination was more than 4 percent, and that this was a contravention of the Charter.

New Brunswick, Nova Scotia and Prince Edward Island

New Brunswick's *Pay Equity Act*[38] and Nova Scotia's *Pay Equity Act*[39] (both passed in 1989), as well as Prince Edward Island's *Pay Equity Act*[40] (enacted in 1988), are similar in concept to the Manitoba statute, requiring public employers to take steps to remove wage inequities. The New Brunswick statute applies only to the Public Service, whereas the Nova Scotia statute covers all public-sector employers, including municipalities, health care facilities and universities. The Prince Edward Island statute covers Crown corporations, universities and colleges, nursing homes, and other agencies to be identified in the regulations. To date, no such regulations have been passed.

New Brunswick's legislation requires that the employer negotiate with bargaining agents representing employees in the Public Service with respect to a job evaluation process and the implementation of any wage adjustments. The Pay Equity Bureau represents the employer during the implementation phase, determining the process for dealing with unrepresented employees, maintaining statistical information, providing reports to the parties and so on.

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[37] *Manitoba Council of Health Care Unions* v. *Bethesda Hospital* (1992), 88 D.L.R. (4th) 60 (Man. Q.B.) This decision was not appealed.

[38] New Brunswick. *Pay Equity* Act. R.S.N.B. 1973, c. P-5.01.

[39] Nova Scotia. *Pay Equity* Act. R.S.N.S. 1989, c. 337.

[40] Prince Edward Island. *Pay Equity* Act. R.S.P.E.I. 1988, c. P-2.

In Nova Scotia, parties to an employment relationship covered by the statute are required to bargain in good faith with respect to the achievement of pay equity. A Pay Equity Commission provides advice and assistance. The Commission may intervene to determine matters in dispute, or to direct the parties to comply with the Act, although no sanctions are spelled out in the statute for failure to comply. The legislation contemplates a single wage adjustment, and makes no provision for maintenance, though the Commission continues to monitor the agreements which have been implemented.

In Prince Edward Island, the *Pay Equity Act* provides for the establishment of a Pay Equity Bureau and the appointment of a Commissioner of Pay Equity to provide information and assistance in the achievement of pay equity by the parties named in the statute. These agencies were also originally empowered to monitor and to process complaints following the achievement of pay equity, but these powers were eliminated in 1995,[41] apparently in order to minimize the effect of the pay equity process on ongoing collective bargaining.[42]

Ontario and Quebec

Public- and private-sector employers covered.

The most far-reaching of the proactive legislation is found in Ontario and Quebec. These provinces have both enacted legislative schemes which covers all public- and private-sector employers, with the exception of some small employers.

Ontario

Requirement for all employers to establish and maintain pay equity.

Passed in 1989, Ontario's *Pay Equity Act*[43] was perhaps the most progressive pay equity statute of its time. The proactive intent of the legislation was clear in section 7(1), which went farther than simply saying that wage discrimination is objectionable:

> 7.(1) Every employer shall establish and maintain compensation practices that provide for pay equity [defined in terms of comparisons between male and female job classes] in every establishment of the employer.

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[41] Prince Edward Island. *An Act to Amend the Pay Equity Act*, S.P.E.I. 1995, c. 28, s. 3.

[42] "Pay Equity Flash: Prince Edward Island." 4 CCH Focus on *Canadian Employment and Equality Rights* 49. (1995).

[43] Ontario. *Pay Equity* Act. R.S.O. 1990, c. P. 7.

Positive obligation on all employers with more than 10 employees.

The statute thus places a positive obligation on each employer who has more than 10 employees to ensure that its own compensation policies are not discriminatory and lays out clear methodological and procedural requirements for achieving a non-discriminatory wage structure. The unit of comparison—the "establishment" referred to in section 7(1)—is all employees of an employer in a geographic division. The statute also permits the joining together of different employers as a single establishment by agreement.

The *Pay Equity Act* provides that a pay equity plan must be negotiated with any trade union representing employees. Where there is no trade union, there is no obligation for an employer to discuss the pay equity plan with the employees, although they are entitled to comment on the posted plan, and to raise objections with the Pay Equity Commission if they disagree with it.

The legislature was clearly aware that it would not be possible for employers to meet the legislated requirements without help.[44] The statutory obligations set out in the *Pay Equity Act* are therefore supported by specialized pay equity agencies performing a number of different functions. The Pay Equity Commission is composed of two separate bodies—the Ontario Pay Equity Office and the Ontario Pay Equity Hearings Tribunal.

Functions of Pay Equity Office.

The first of these bodies is the Ontario Pay Equity Office (PEO), which performs a number of different functions. In the early years of the PEO, a great deal of emphasis was placed on the educational and advisory function. Educational and promotional campaigns designed to bring the pay equity legislation to the attention of all workers and employers were conducted. The PEO also provided materials and templates for use in the pay equity process, and offered a source of non-partisan advice about entitlements and responsibilities under the Act.

A second important role played by the PEO is to provide assistance, through its review services branch, for employers and employee representatives engaged in job evaluation and the formulation of pay equity plans. The review officers of the PEO have a mandate which includes providing information, investigating complaints, facilitating discussion and issuing compliance orders.

The PEO has the authority to monitor and audit pay equity plans to assess the degree of compliance with the legislation. With its limited resources, the Commission has not been able to institute a comprehensive or thorough audit system, but it has carried out examinations of particular economic sectors.

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[44] For a more extensive discussion of oversight agencies, see Chapter 17.

Ontario Pay Equity Hearings Tribunal

Functions of Tribunal.

The Pay Equity Hearings Tribunal acts as an adjudicative body in cases where a compliance order of the Pay Equity Office (PEO) is appealed, or where it is referred by the PEO for enforcement.

Through its decisions—about five hundred since its creation—the Pay Equity Hearings Tribunal has developed a body of interpretive principles which have helped to guide further efforts to apply the *Pay Equity Act*. There have been very few applications for judicial review, and the courts have shown a considerable degree of deference to the decisions of the Tribunal. Though it is not altogether clear what the rationale for this deference may be, one speculation is that the tripartite nature of the Tribunal, and its specialized mandate, suggest to the courts that the high level of judicial deference accorded to labour tribunals is the appropriate one.

Quebec

1996: Quebec passes *Pay Equity Act*.

Quebec's *Pay Equity Act*[45] was passed in 1996. Like the Ontario statute, the legislation imposed a positive obligation on employers in the public and private sectors. In this case, employers with fewer than 10 employees are not covered under the statute. The statute contemplates different requirements for enterprises employing more than one hundred employees, enterprises employing between 50 and 99 employees, and enterprises with between 10 and 49 employees.

The statute uses the concept of "enterprise" which is common to Quebec's *Civil Code* and *Labour Code*, where "enterprise" is defined as configuration of activities which can be described as self-contained and functional.

The statute contemplates that, as a rule, there will be a single pay equity plan covering all employees of an enterprise.

Quebec's *Pay Equity Act*, however, provides that enterprises may have more than one pay equity plan in the following situations:

- ➤ An employer can apply to the Quebec pay equity commission for authorization to establish a separate plan applicable to one or more establishments within the enterprise if this approach is warranted by regional disparities (section 10 and 31). The pay equity commission has issued guidelines defining regional disparities.
- ➤ At the request of a union representing employees in the enterprise, the employer must establish a separate pay equity plan applicable to all employees represented by that union (section 11, pargraph 1 and section 32, paragraph 1).

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[45] Quebec. *Pay Equity Act*. R.S.Q., c. E-12.001.

- If the employer and union both agree, separate plans can be established for employees represented by the union in one or more establishments of the enterprise that have not been given authorization to establish a separate plan as a result of regional disparities. (section 11, paragraph 1 and section 32, paragraph 2).

The last two exemptions do not require the authorization of the Quebec pay equity commission.

Enterprises with between 10 and 49 employees are not required to develop a formal pay equity plan, but these employers are required to assess their compensation system and determine whether any wage adjustments are required.

The statute provides that the employer has a responsibility to ensure that the pay equity plan is maintained as well.

Commission de l'équité salariale (Québec) [Quebec pay equity commission]

Quebec pay equity commission.

The objectives of the *Pay Equity Act* are overseen by a three-person Commission de l'équité salariale [Quebec pay equity commission]. Section 93 of the Act confers on the Commission a broad range of powers and responsibilities, which include conducting impartial investigations of disputes or complaints; developing tools for the assistance of employers and pay equity committees in developing pay equity plans or otherwise achieving pay equity; assisting in the training of pay equity committee members; communicating information to the public about the *Pay Equity Act*; providing reports and advice to the government about the progress of this legislative policy; and carrying out research and studies on relevant issues.

Bureau de conseil et de formation en équité salariale

Bureau dissolved in 2003, functions assumed by Commission.

In October 2001, as the deadlines specified in the *Pay Equity Act* for the completion of the pay equity exercise approached, the Ministry of Labour of the Government of Quebec established a temporary unit within the department to provide assistance to small- and medium-sized enterprises with between 10 and 99 employees in meeting the pay equity objectives.

In recognition that enterprises of this size often lack the resources necessary to have a pay equity plan designed specifically for them, this office provided not only general information and advice about how to approach the assessment of jobs and the calculation of necessary wage adjustments, but created templates and sample job evaluation exercises to assist smaller employers in assessing the value of the work done by their employees and correcting discriminatory wage anomalies.

The Bureau provided assistance to small- and medium-sized enterprises.

In addition, the Bureau encouraged smaller employers to form sectoral committees, so that they could develop a consistent approach across a particular industry.

In 2003, the Bureau was dissolved and its functions assumed by Quebec pay equity commission.

Non-Legislative Approaches

Saskatchewan, Newfoundland, British Columbia and Alberta have adopted limited, non-legislative approaches to pay equity.

Saskatchewan

1999: Government develops *Equal Pay for Work of Equal Value and Pay Equity Policy Framework*.

The Saskatchewan Human Rights Commission has recommended that proactive and comprehensive pay equity legislation be enacted.[46] This recommendation has not been pursued by the Government of Saskatchewan. In 1999, however, the government undertook the development of an *Equal Pay for Work of Equal Value and Pay Equity Policy Framework*. This project applies to the public sector, and includes Crown corporations, Treasury Board agencies, boards and commissions, the Saskatchewan Institute of Applied Science and Technology, regional colleges and the health care sector. The criteria used in the Framework are reminiscent of the standards contained in the Ontario and Quebec legislation.

Joint committees were set up for each employer, and were given a 24-month period to negotiate a pay equity plan. A compensation review committee was created to review the plans and oversee their implementation.

Newfoundland

1988: government negotiates pay equity with public-sector unions.

In Newfoundland, beginning in 1988, the government actively initiated pay equity negotiations with public-sector unions as part of the collective bargaining process. Agreements were reached with unions representing some groups of health care workers, employees of Newfoundland Hydro, the Public Service and library workers. Legislation in the early 1990s[47] rendered void any retroactive wage adjustments which were included in these agreements, and this legislation survived a constitutional challenge.[48]

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[46] Saskatchewan Human Rights Commission. (1996). *Renewing the Vision: Human Rights in Saskatchewan.*

[47] Newfoundland. *Public Sector Restraint Act*, S.N.L. 1991, c. 3, s. 9; *Public Sector Restraint Act*, 1992, S.N. 1992, c. P-41.1, s. 9.

[48] *Newfoundland (Treasury Board)* v. *NAPE*, [1998] N.J. No. 96 (S.C.).

British Columbia

1995: BC develops *Public Sector Employers' Council Pay Equity Policy Framework*.

In British Columbia, an approach similar to the one used in Saskatchewan was adopted in 1995 under the *Public Sector Employers' Council Pay Equity Policy Framework*, which contemplated the conclusion of pay equity agreements in a range of public-sector employment relationships.

Under the *Human Rights Code Amendment Act, 2001*[49] the Government of British Columbia proposed to extend a pay equity obligation to the private sector. This legislation, which bore some resemblance to section 11 of the *Canadian Human Rights Act*, was to be administered by the British Columbia Human Rights Commission through a complaint-based process. The current government repealed this legislation, and appointed a Task Force to review the pay equity issue, and to make recommendations for possible legislative change.[50]

The major conclusions and recommendations of the British Columbia Task Force were the following:

- There was still considerable distance to go in achieving the objective of equal pay for equal work, and the government should put additional resources and effort into pursuing this more fundamental goal.
- Pay equity had not yet been achieved by women workers in British Columbia, but there was insufficient evidence to show that proactive legislative programs would in themselves bring them closer to this goal.
- Employers and other actors in the British Columbia economy still needed considerable education about the importance and legitimacy of the goal of pay equity.
- The Government of British Columbia should concentrate its efforts on carrying out comprehensive sectoral studies, which would permit employers, trade unions and employee representatives, along with government, to examine the specific kind of pay equity issues in each sector, with a view to arriving at voluntary sectoral solutions to these issues.
- Legislative action should not be taken immediately, but should be resorted to only if the process of public education, sectoral studies and intensive sectoral discussions fails to reduce wage discrimination.

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[49] British Columbia. *Human Rights Code Amendment Act*, 2001. S.B.C. 2001, c. 15.

[50] Nitya Iyer. (2002). *Working Through the Wage Gap: Report of the Task Force on Pay Equity.* B.C. Ministry of Attorney General.

BC government currently reviewing pay equity report.

The conclusions in the British Columbia Task Force report occasioned considerable controversy and public debate. The report's recommendations did not suggest that the government should be taking legislative action. However, they did propose that sectoral studies should be carried out to support a voluntary pay equity process. The Government of British Columbia has indicated that it is currently formulating a response to the report.[51]

Alberta

No specific pay equity legislation.

Alberta has not enacted any pay equity legislation or developed a framework approach to achieving pay equity for the public sector. The *Human Rights, Citizenship and Multiculturalism Act*[52] contains a provision requiring that the "same rate of pay" be paid for "the same or substantially similar work," a provision of the kind which is included in labour standards statutes in many provinces. This provision offers workers two avenues of recourse: lodging a complaint with the Human Rights Commission, or bringing an action for the recovery of wages in the courts.

This Act also contains a general provision prohibiting discrimination in any term or condition of employment on any of the grounds set out, but this does not seem to have been used to date as the basis for pay equity complaints.

Conclusion

From this review, it is possible to see that the concept of equal pay has been manifested in two different categories of legislation in Canada—labour standards legislation and human rights legislation—and also in non-legislative arrangements.

Labour Standards

Principle of equal pay for equal work.

The principle of equal pay for equal work, or for similar or substantially similar work, aims at eliminating the practice of paying men and women different pay rates for doing the same job. This principle has been embodied in labour standards legislation. The basic premise is that, as a matter of social policy, workers should be protected from the vagaries of the labour market and that their vulnerability in the employment relationship should be recognized by the establishment of minimum standards for all employment contracts. These statutes typically set standards for wages, hours of work, vacation leave, overtime and other essential terms and conditions for workers. These standards are enforced by a regulatory system which includes inspections, reports, and a process of summary adjudication.

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[51] British Columbia, Legislative Assembly. Debates, April 1, 2003, at 5847.

[52] Alberta. *Human Rights, Citizenship and Multiculturalism Act*. R.S.A. 1980, c. H-11.7, s. 6.

The inclusion of the concept of equal pay for equal work among these minimum standards for workers is evidence that, in national and international discussions of labour issues, equal pay in this sense has been and continues to be seen as part of a general effort to ameliorate the conditions of workers in their contractual relationships with their employers. For unionized workers, this legislation has largely been supplanted by new standards set by their collective agreements; for many thousands of unorganized workers, however, labour standards statutes represent the platform on which their employment contracts are based.

Human Rights

Principle of equal pay for work of equal value.

The concept of equal pay for work of equal value has emerged in the context of debate about the entrenchment in legislation and the implementation of protections for human rights. International human rights documents and domestic human rights legislation are based on the premise that all human beings enjoy certain fundamental and non-negotiable entitlements, and that these are founded on the values of human dignity and mutual respect. Because this kind of legislation is considered as a reflection of basic and irreducible human values, it was characterized from the beginning as having a different status from ordinary legislation, and as providing important interpretive principles in relation to a wide range of social interactions. This was so even prior to the explicitly constitutional status given to the rights entrenched in the *Canadian Charter Rights and Freedoms*, which had the effect of enhancing the standing of human rights provisions generally. There is further discussion of the quasi-constitutional status of human rights legislation in Chapter 6 of this report.

In some cases, the principle of equal pay for work of equal value has been stated in general statutes which establish regimes for the protection of a wide range of human rights. In other cases, specialized legislation has been passed which deals exclusively with the principle of pay equity, and which spells out standards for processes by which the goal of pay equity may be achieved.

The Canadian Experience Is Uniquely Varied

It can be seen from this review that Canadian jurisdictions have tried in many different ways to give legislative effect to the principle of equal pay for work of equal value. The legislative options which have been tried include labour standards and human rights legislation; complaint-based models and proactive models; legislation which is restricted to the public sector or the

Public Service, or which also covers private-sector employers; and legislation which assigns the administration of pay equity provisions to human rights or labour agencies, or which establishes specialized tribunals to deal exclusively with equal pay.

Canadian range and variety is unique.

There are three comments which should be made about this legislative record. The first is that Canada is unique in the variety of equal pay for work of equal value provisions which have been enacted, and in its length of experience with models such as the comprehensive models in place in Ontario and Quebec, which represent a new experiment with legislation.

Many valuable lessons learned from diverse solutions.

The second observation is that there is much to be learned from studying this range and variety of legislative experiments. Each of these pieces of legislation, from the oldest to the newest, has its critics, and none of them has been entirely successful to this point in eliminating wage discrimination. Nonetheless, there are many valuable lessons to be learned by examining the effect all this legislation has had, and the impression it has made on those who have been affected by it. We have benefited hugely from our opportunity to compare these legislative approaches, and from the advice of those who have had occasion to assess and comment on them.

Trend to positive and proactive legislation.

Finally, though principles related to equal pay for work of equal value have been expressed in many different legislative forms in Canada, these developments have not taken place in a random way. Legislation aimed exclusively at achieving equal pay for equal work is no longer regarded as adequate to deal with the systemic aspects of wage discrimination, and more recent legislation has been based on the principle of equal pay for work of equal value. The review of legislation concerning equal pay also speaks of a recognition over time that the goal of pay equity is more likely to be achieved if legislation contains more focused criteria and standards. There is also a discernible trend in this legislative record in the direction of increasingly positive and proactive legislative schemes.

Chapter 3 – The Current Pay Equity Model

In this chapter, we will begin with a description of the current pay equity regime in place under section 11 of the *Canadian Human Rights Act* (CHRA) and the supporting *Equal Wages Guidelines, 1986*. We will then proceed to outline the ways in which this legislation has helped stakeholders broaden their understanding of the concepts of pay equity, and develop their skills in analysing and correcting wage discrimination. Finally, we will explore the deficiencies in the legislation that have led stakeholders and other observers to conclude that it is not the most effective model for achieving pay equity or addressing systemic discrimination.

Section 11 of the *Canadian Human Rights Act*

The discourse concerning wage discrimination against women was framed, in the decades following the Second World War, in terms of equal pay for equal work. Over time, the focus of this discourse changed so that the aspiration articulated on behalf of women was described in a way which would better capture the systemic aspects of wage discrimination. This principle is expressed as equal pay for work of equal value.

1970: Royal Commission on the Status of Women recommends equal pay for work of equal value.

This was the language used in the recommendations made by the Royal Commission on the Status of Women in Canada in 1970. The response of the Government of Canada, in 1977, was to enact section 11 of the *Canadian Human Rights Act.* The basic objective of pay equity is stated in section 11(1) as follows:[1]

> 11. (1) It is a discriminatory practice for an employer to establish or maintain differences in wages between male and female employees employed in the same establishment who are performing work of equal value.

Skill, effort, responsibility and working conditions form the basis for comparing work.

Other parts of section 11 outline the parameters for meeting this goal. They refer to the criteria of skill, effort, responsibility and working conditions as providing the basis on which the comparable value of work should be assessed,[2] and prohibit an employer from defining "establishment" in a manner which will perpetuate discrimination.[3]

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[1] Canada. *Canadian Human Rights Act.* R.S.C. 1985, c. H-6. Section 11 is reproduced in its entirety in Appendix C – *Canadian Human Rights Act*, R.S. 1985 c. H-6.

[2] Ibid., subsection 11(2).

[3] Ibid., subsection 11(3). The concept of "establishment" is discussed in detail in other parts of this report, in particular Chapter 7.

Subsection 11(4) alludes to the "reasonable factors" which are considered a legitimate basis for differences between male and female wages which might otherwise be considered as discrimination. These factors are enumerated in the *Equal Wages Guidelines, 1986*, which are described below. The scope of these reasonable factors is further defined in subsection 11.(5), which reads as follows:

> 11. (5) For greater certainty, sex does not constitute a reasonable factor justifying a difference in wages.

Employers cannot reduce wages in order to eliminate discrimination.

Subsection 11(6) makes it clear that wages cannot be reduced in order to eliminate discrimination. This provision means that the cost of eliminating established patterns of discrimination is not to be borne by employees, which may help to reduce the hostility of male employees to the rectification of wage differences. It also means that employers must bear the costs of making any wage adjustments required to correct discrimination. In establishing any legislative regime for pay equity, it is necessary to consider the implications of these costs for the financial welfare of employers, and also their possible effect on the attitudes of employers to the legislation, though these considerations cannot be allowed to override the basic objective of the legislation, which is to eliminate discriminatory wage practices.

Finally, subsection 11(7) outlines the components which are to be included as "wages" in making comparisons.[4]

Section 11 applies to all federal jurisdiction employers, regardless of size.

It will be appreciated from this description that, while section 11 sets out the basic principle whereby all men and women have the right to be paid equally for work of equal value, it does not speak in detail of the standards which are to be met or the process which is to be used in eliminating discrimination. Section 11 applies to all employers within federal jurisdiction, regardless of the number of employees.

Subsection 27(2) of the *Canadian Human Rights Act* empowers the Canadian Human Rights Commission (CHRC) to issue guidelines

> setting out the extent to which and the manner in which, in the opinion of the Commission, any provision of this Act applies in a class of cases described in the guideline.[5]

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[4] There is further discussion of what constitutes compensation for pay equity purposes in Chapter 11.

[5] Canada, *supra*, note 1.

The CHRC issued such guidelines in relation to section 11, which reached their current form in 1986.[6] According to the CHRC's special report to Parliament in 2001,[7] the *Equal Wages Guidelines, 1986* were intended to prescribe

> a) the manner in which section 11 of the *Canadian Human Rights Act* is to be applied; and
>
> b) the factors that are considered reasonable to justify a difference in wages between men and women performing work of equal value in the same establishment.

Subsection 27(3) of the *Canadian Human Rights Act* renders any guidelines of this kind binding not only on the CHRC, but on any panel of the Canadian Human Rights Tribunal assigned to consider a complaint. The elaboration of section 11 provided in the Guidelines could be expected to have two effects: to provide additional assistance to those required to comply with section 11, and to provide an interpretive guide to the Canadian Human Rights Tribunal in considering complaints arising under section 11.

The *Equal Wages Guidelines, 1986*

Intellectual and physical effort must be considered.

The Guidelines begin by elaborating further on the four elements—skill, effort, responsibility and working conditions—which are used to measure the value of work for the purposes of comparisons under section 11. In describing these four elements, it seems clear that the Canadian Human Rights Commission was attempting to ensure that the process by which the value of work is assessed takes into account all of the features of work done by men and by women. Some of the characteristics of women's work, such as psychological stress, had traditionally been obscured by the selection of characteristics used in describing work. Thus, for example, section 5 of the Guidelines clarifies that intellectual as well as physical effort must be taken into account in assessing the value of work.

Section 8 of the *Equal Wages Guidelines, 1986* indicates that both physical and psychological features of working conditions must be considered in valuing work, and that these features may include noise, temperature, isolation, physical danger, health hazards and stress.

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[6] The *Equal Wages Guidelines, 1986* are reproduced in their entirety in Appendix D – *Equal Wages Guidelines, 1986*, SOR/86-1082. The implications of the sections allowing the Commission to create binding guidelines for the independence of the Tribunal was considered in *Bell Canada* v. *Canadian Telephone Employees' Association*, 2003 SCC 36.

[7] Canadian Human Rights Commission. (2001). *Time for Action: Special Report to Parliament on Pay Equity*. Ottawa: Minister of Public Workers and Government Services. Annex IV.

Basic standards for valuing work.

Section 9 of the Guidelines indicates the basic standards to be met by any system which is used by an employer in placing a value on work. In the words of section 9, an acceptable system

> a) operates without any sexual bias;[8]
>
> b) is capable of measuring the relative value of work of all jobs in the establishment; and
>
> c) assesses the skill, effort, and responsibility and the working conditions determined in accordance with sections 3 to 8.

Concept of "establishment."

Section 10 of the Guidelines sheds further light on the concept of "establishment," which constitutes the key constituency on which comparisons of jobs are based. It reads as follows:

> 10. For the purpose of section 11 of the Act, employees of an establishment include, notwithstanding any collective agreement applicable to any employees of the establishment, all employees of the employer subject to a common personnel and wage policy, whether or not such a policy is administered centrally.

Though no authoritative definition of the term "establishment" is found in either section 11 of the *Canadian Human Rights Act*, or in the *Equal Wages Guidelines, 1986* themselves, it is possible to interpret this section as consistent with an understanding of this term which would not be coterminous with the boundaries of a bargaining unit of employees represented by a particular trade union. This was certainly the interpretation argued by the Canadian Union of Public Employees (CUPE) in *Canadian Union of Public Employees (Airline Division)* v. *Canadian Airlines International Ltd.*[9] In that case, however, the Canadian Human Rights Tribunal concluded that, at least in the circumstances of that case, the terms and conditions of employment set out in collective agreements constituted the "common personnel and wage policy" which was relevant to the definition of the establishment. Acknowledging that their task was to give a "broad, remedial and purposive" interpretation to section 11 of the *Canadian Human Rights Act*, the Tribunal concluded that to adopt a configuration of an establishment which would permit the comparison of the wages of flight attendants with those of pilots and airline mechanics covered by very different collective agreements would be to "redraft" rather than interpret the statute. The comments of the Tribunal in this decision[10] have created some uncertainty about the meaning and significance of section 10 of the Guidelines.

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[8] The concept of gender neutrality and inclusiveness is discussed in this report in Chapter 13.

[9] *Canadian Union of Public Employees (Airline Division)* v. *Canadian Airlines International Ltd.*, T.D. 9/98.

"Male" and "female" jobs.

Sections 11 to 15 inclusive of the *Equal Wages Guidelines, 1986* deal with specific aspects of processing and determining complaints filed under section 11 by individuals and groups. For example, subsection 11(1) provides that the gender composition of an occupational group is a relevant consideration in determining the complaint of a member of that group.[11] Section 13 sets out a sliding scale, according to the number of employees in an establishment, for the threshold numbers which determine whether a job should be considered a "male" job or a "female" job.

"Reasonable factors" justify gender wage differentials.

The remainder of the *Equal Wages Guidelines, 1986* deal with the "reasonable factors" which may be used to justify a wage differential which appears to be discriminatory.[12] The factors included in this list are the following:

- different performance ratings, where a formal system of performance appraisal is in place;
- seniority;
- red-circling of a position which has been downgraded;
- a rehabilitation assignment;
- red-circling when an employee has been demoted;
- gradual reduction in wages for certain factors beyond the control of the employee, such as health;
- a temporary training position;
- an internal labour shortage in a particular job classification;
- reclassification of a position to a lower level;
- regional wage rates.

Administration of Section 11

In contrast to legislation in some other Canadian jurisdictions, the *Canadian Human Rights Act* does not provide for a separate administrative system dedicated to the pursuit of pay equity. Rather, the means that ensure compliance with section 11 are the same ones that are used to enforce the rest of the statute.

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[10] An application for judicial review of the decision is before the Federal Court.

[11] See Chapter 9 for discussion of gender predominance.

[12] See the discussion of reasonable factors in Chapter 12.

The Canadian Human Rights Commission

CHRC responsible for promoting goals of the CHRA.

The Canadian Human Rights Commission (CHRC), an independent agency reporting to Parliament, has general statutory responsibility for pursuing and promoting the goals set out in the *Canadian Human Rights Act* (CHRA). Like other human rights agencies established in the same period, the Commission has a mandate consisting of a number of components.

The CHRC is perhaps best known for its work in processing human rights complaints. A citizen who claims a violation of any of the rights stated in the CHRA may seek redress by lodging a complaint with the Canadian Human Rights Commission. The CHRC plays an important role in receiving complaints, and in assessing and investigating them. CHRC staff also explore possibilities for settlement, prior to determining whether a complaint should be referred to adjudication before the Canadian Human Rights Tribunal. To carry out this responsibility for the investigation of complaints under section 11, and for the facilitation of settlement discussions, the CHRC established the Pay Equity Branch. The staff members of this unit examine pay equity complaints, and assist the parties to employment relationships in attempting to meet the goal of pay equity.

Supreme Court of Canada concludes that the CHRC's advocacy role does not infringe on the independence of the CHRT.

The gatekeeper role assigned to human rights agencies has proved important over the last several decades in identifying important human rights issues which require consideration and comment in an adjudicative setting. It has also given persons who fall within the jurisdiction of the *Canadian Human Rights Act* (CHRA) confidence that their complaints can be addressed. The role of the CHRC goes beyond merely deciding whether a complaint should be adjudicated. In the event that a complaint proceeds to adjudication, the CHRC may pursue the issue as a party. The rationale for assigning this role to the CHRC is twofold: it is important that the rights set out in the CHRA have a champion. Furthermore, given their inherently vulnerable position, many complainants may be prevented from vigorous participation in this type of proceeding in the absence of representation. The CHRC's advocacy function has occasioned considerable controversy, and has been challenged as impinging on the independence of the Canadian Human Rights Tribunal. Most recently, the Supreme Court of Canada concluded in the Bell Canada case,[13] in the context of recent amendments to the CHRA, that the combination in the CHRC of an advocacy role along with other functions does not constitute an infringement on the independence of the Canadian Human Rights Tribunal.

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[13] Bell Canada, *supra*, note 6.

CHRC's mandate includes fostering a more hospitable climate for human rights and monitoring the state of human rights.

In addition to its functions in the area of individual complaints, the CHRC exercises the broader mandate of fostering a more hospitable climate for human rights and of monitoring the state of human rights within the federal jurisdiction. The CHRA indicates an expectation that the CHRC will engage in educational and promotional activities, sponsor research, undertake publicity campaigns, report to Parliament, and carry out other activities aimed at enhancing the awareness of the public and of public institutions regarding human rights issues. In its report *Promoting Equality: A New Vision 2000,* the *Canadian Human Rights Act* Review Panel noted that decreases in funding for the CHRC in recent years had undermined its capacity to effectively fulfil this aspect of its mandate.

The CHRC is also encouraged to review regulations and policies, and to elaborate on and explain the obligations set out in the statute through the formulation of policy statements, rules and guidelines. The CHRC has issued a number of publications related to section 11, including the *Guide to Pay Equity and Job Evaluation* and informational materials directed specifically at employees and employers.[14]

Under its mandate, the Commission can take special measures to ensure that its programs are effective in advancing particular human rights goals. With respect to the pay equity provisions in section 11, the establishment of the Pay Equity Branch, the publication of specialized informational and promotional materials, and the formulation of the *Equal Wages Guidelines, 1986* are all examples of the attention specifically directed at section 11 by the Commission.

Equal Pay for Equal Work

In Chapter 2, we alluded to legislative provisions supporting an entitlement to equal pay for equal work. One such provision, as we noted, was subsection 38.1(1) of the *Canada Labour Code.*

Following the passage of section 11 of the *Canadian Human Rights Act,* a series of amendments to the *Canada Labour Code* made it clear that, for questions of equal pay, Labour Canada (now the Labour Program, Human Resources Development Canada) plays a role that is limited to providing support, information and assistance and that the department no longer performs direct oversight functions.

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[14] These publications may be found on the Canadian Human Rights Commission website at http://www.chrc-ccdp.ca.

Equal pay for equal work.

These amendments to the *Canada Labour Code* included the elimination of subsection 38.1(1). In contrast to section 11, which deals specifically with equal pay for work of equal value, there is no provision in the *Canadian Human Rights Act* (CHRA) which directly addresses the issue of equal pay for equal work. Complaints with respect to this issue can, however, be made under sections 7 and 10 of the CHRA, which are of general application. These provisions read as follows:

> 7. It is a discriminatory practice, directly or indirectly,
>
>   (a) to refuse to employ or continue to employ any individual, or
>
>   (b) in the course of employment, to differentiate adversely in relation to an employee,
>
>   on a prohibited ground of discrimination.
>
> [...]
>
> 10. It is a discriminatory practice for an employer, employee organization or employer organization
>
>   (a) to establish or pursue a policy or practice, or
>
>   (b) to enter into an agreement affecting recruitment, referral, hiring, promotion, training, apprenticeship, transfer or any other matter relating to employment or prospective employment, that deprives or tends to deprive an individual or class of individuals of any employment opportunities on a prohibited ground of discrimination.

Onus is on employee to demonstrate wage inequity – required information may be hard to obtain.

It is difficult to determine from available statistics how many equal pay for equal work complaints have been handled by the Canadian Human Rights Commission, since they are recorded as general complaints of discrimination. It is likely, however, that employees who wish to make a complaint of this nature encounter the difficulties with the complaint-based system which we describe later in this chapter. Though the resolution of wage discrimination based on the concept of equal pay for equal work does not require the kind of technical analysis which is entailed in a system designed to bring about equality in pay for work of equal value, the onus nonetheless rests on the employee to marshal information needed to demonstrate a difference in pay as compared to other employees doing the same work, and this information may be difficult for an employee to obtain.

Employment Equity

Employment Equity Act (EEA).

It should be noted that the Commission also has a role in the administration of the *Employment Equity Act* (EEA).[15] The purpose of the EEA is to remove barriers which deny employment opportunities to qualified persons, and to correct the conditions of disadvantage in employment experienced by four groups: women, members of visible minorities, Aboriginal peoples and persons with disabilities. As there are clear parallels and connections between the issues addressed in the *Employment Equity Act* and the subject matter of section 11, we will be pointing out the links between pay equity and employment equity at different points in this report.

Proactive approach – EEA places positive obligation on employers to remove systemic barriers.

The *Employment Equity Act* was substantially amended in 1995 to incorporate a more proactive approach to the identification and removal of systemic barriers which prevent equal access to employment for members of groups that have suffered from historic disadvantage. The amended legislation makes it clear that a positive obligation rests on employers to take steps to remove these impediments, and creates specific requirements for reporting and analysis. It also establishes a process for the review of employer compliance.

The *Employment Equity Act* places a positive obligation on employers with 100 or more employees to identify and eliminate barriers to the employment of the four designated groups. To this end, employers are required to develop and implement an employment equity plan containing goals for the hiring and promotion of members of designated groups, including positive policies to address under-representation and to move towards a representative workforce. The legislation is intended to bring about a critical examination of the whole range of human resources policies and practices within an employer's organization to ensure that they are not based on discriminatory premises.

Employers required to file an annual employment equity report.

Employers covered by the EEA include federally-regulated private-sector employers and Crown corporations, the federal Public Service, and Special Operating Agencies of the Government (separate employers). Subsection 42(2) of the EEA also ensures that equivalent program requirements exist for those employers that are subject to the EEA and those that are subject to the Federal Contractors Program (FCP). The FCP requires employers who bid for federal goods or services contracts valued at $200,000 or more to certify their commitment to implement employment equity initiatives as a condition of their contract.

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[15] Canada. *Employment Equity Act*. S.C. 1995, c. 44.

The EEA requires federally-regulated private-sector employers and Crown corporations to file an employment equity report annually with the Minister of Labour. This report includes both qualitative and quantitative data, and is intended to demonstrate the progress which is being made towards establishing a representative workforce. Federal departments make similar reports to the President of the Treasury Board. Each year, the Minister of Labour and the President of the Treasury Board jointly table employment equity reports to Parliament.

Because employers have a positive obligation under the *Employment Equity Act* and the *Employment Equity Act Regulations*, the Commission plays a somewhat different role than it does with respect to the exclusively complaint-based system of the *Canadian Human Rights Act*. The Commission is responsible for ensuring employer compliance with statutory obligations, with the exception of reporting requirements, which are the responsibility of the Minister of Labour. The Commission is mandated by the EEA to carry out employer audits and to report to Parliament annually on its employment equity activities. The Employment Equity Branch delivers training sessions, presentations and workshops to help employers gain a better understanding of the EEA. The Branch also assists employers by assessing their goals in areas of under-representation. If employers are failing to comply, the Commission has authority under the EEA to issue directions for remedial action.

According to the *2002 Annual Report* of the Canadian Human Rights Commission, since the start of its employment equity mandate in 1997, the Commission has audited 253 or 51.1 percent of employers subject to the EEA, representing 714,058 (75.4%) of employees in the federally-regulated workforce. The total number of audits undertaken since 1997 is 416, since most employers required at least one follow-up audit before they could be declared in compliance. Of these 416 audits, 336 have been completed.[16] In 2002, the Branch produced the *Employment Systems Review: Guide to the Audit Process*, which describes the audit process for the benefit of employers who will ultimately be placed on the audit list.

The Canadian Human Rights Tribunal

The Canadian Human Rights Tribunal is an adjudicative tribunal which hears complaints of violations of the *Canadian Human Rights Act* which are referred to it by the Canadian Human Rights Commission.

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[16] Canadian Human Rights Commission. (2003). *2002 Annual Report*. Ottawa: Public and Works and Government Services. Table 1, p. 33.

Pay equity cases – lengthy and costly.

The *Canadian Human Rights Act* Review Panel commented that delay in the processing and determination of complaints is a common object of criticism of the administration of the CHRA.[17] The specialized and technical nature of pay equity complaints has led to especially lengthy proceedings before the Tribunal in these cases. Though they do not hear a large number of pay equity cases, these cases take longer on average than other kinds of complaints. Pay equity cases occupy an average of 176 days of hearings from beginning to end compared with an average of 17 days for complaints involving allegations of discrimination on the basis of race, colour, or national or ethnic origin. In addition, the average length of hearings for complaints, other than pay equity complaints, alleging discrimination on the grounds of sex and marital status is nine days. In 2001, pay equity cases accounted for 70 of the 211 days of hearings conducted by the Canadian Human Rights Tribunal.[18] The length of time occupied by pay equity complaints has clear implications for the costs associated with administering section 11.

In *Time for Action,* a report to Parliament on the subject of pay equity,[19] the Canadian Human Rights Commission traced the course of two particularly protracted cases in detail to demonstrate the slow rate of progress through the system. In a complaint involving Bell Canada, the Canadian Telephone Employees' Association, the Communications, Energy and Paperworkers Union (CEP) and Femmes-Action, the original complaints were filed with the Commission in 1988 and referred to the Tribunal in 1996. The Tribunal has not yet issued a decision in this case, in part because of a series of procedural applications to the courts which have interrupted the hearings.

Independence of Tribunal challenged.

The independence of the Tribunal itself was attacked by the employer in some of these applications. There were two grounds for these challenges to institutional independence. The first challenge[20] was based on the multiple roles of the Canadian Human Rights Commission (CHRC) which we have described earlier. In the *Canadian Human Rights Act* as it stood at the time, the CHRC had certain administrative responsibilities for the compensation of members of the Tribunal. In addition, the CHRC functioned as a gatekeeper in the investigation, assessment and referral of complaints, and also appeared as a party to the proceedings. It was argued that this multiplicity of roles compromised the impartiality of the CHRC and created a chronic conflict of interest. It was also argued that the administrative role played by the CHRC in relation to the Tribunal—before which it appeared as a party—cast doubt on the independence of the Tribunal. The Federal Court of Canada agreed that the independence of the Tribunal was not guaranteed under these circumstances.

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[17] *Canadian Human Rights Act* Review Panel. (2000). *Promoting Equality: A New Vision.*

[18] See the Canadian Human Rights Tribunal. (2002). *Performance Report* for the Period Ending March 31, 2002, Figure 2, p. 21 and Figure 3, p. 30.

[19] Canadian Human Rights Commission, *supra*, note 7, pp. 26-30.

[20] *Bell Canada* v. *Canadian Telephone Employees Association.* [1998] 3 F.C. 244 (T.D.).

In response to this finding, the statute was amended to bring about greater administrative distance between the Commission and the Tribunal.[21] The issue of whether this amendment does in fact provide adequate safeguards to the independence of the Tribunal was raised by Bell Canada in a subsequent application, resulting in a decision of the Supreme Court of Canada that the current administrative configuration provides adequately for the independence of the Tribunal.[22] The Court commented:

> Indeed, it may be that the overlapping of functions in the Commission is the legislature's way of ensuring that both the Commission and the Tribunal are able to perform their intended roles.[23]

Supreme Court declares that the power of the CHRC does not impinge on the independence or the impartiality of the Tribunal.

The second basis for criticism concerning the independence of the Tribunal concerned the *Equal Wage Guidelines, 1986*. Under subsections 27(2) and 27(3) of the *Canadian Human Rights Act*, the Commission has the authority to issue guidelines which are binding in their effect on both the Commission and the Tribunal. In its application, the employer argued that this power permitted the Commission to determine the interpretive policy and thus the outcome of proceedings before it. The Supreme Court of Canada has also declared that the power of the Commission to issue guidelines did not impinge on the independence or the impartiality of the Tribunal:[24]

> The objection that the guidelines power unduly fetters the Tribunal overlooks the fact that guidelines are a form of law. It also mistakenly conflates impartiality with complete freedom to decide a case in any manner that one wishes. Being fettered by law does not render a tribunal partial, because impartiality does not consist in the

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[21] Canada. Bill S-5, *An Act to amend the* Canada Evidence Act, Criminal Code *and* Canadian Human Rights Act, S.C. 1998, c. 9, ss. 48.1 to 48.9.

[22] Bell Canada, *supra*, note 6.

[23] Ibid., para. 41.

[24] Ibid., para. 38.

> absence of all constraints or influences. Rather, it consists in being influenced only by **relevant** considerations, such as the evidence before the Tribunal and the applicable laws. [...] Predispositions that simply reflect applicable law do not undermine impartiality. On the contrary, they help to preserve it. Hence, the fact that the Tribunal must apply all relevant law, including guidelines formulated by the Commission, does not on its own raise a reasonable apprehension of bias.

These continuing uncertainties as to whether the Tribunal has sufficient independence from the Commission to determine pay equity complaints impartially have certainly been one of the factors which have drawn out the proceedings before the Tribunal to extraordinary lengths. Other factors have been the variety and number of procedural applications both before the Tribunal itself and before the courts, and the complexity of much of the technical and expert evidence which is required in this kind of litigation. In the Bell Canada decision, the Supreme Court noted that procedural applications had consumed 13 years, while the complaint on its merits has yet to be heard.

Human Resources Development Canada

Canada Labour Code.

The *Canada Labour Code*[25] outlines a system of workplace inspection which is used to monitor compliance with the statutory obligations of employers.

Section 182 links that system to the pay equity provisions of the *Canadian Human Rights Act,* and permits Human Resources Development Canada to monitor compliance with section 11 as it would monitor provisions of the *Canada Labour Code* itself.

Equal Pay Program.

Pursuant to this section of the Code, the Equal Pay Program was established in 1985. Initially, the staff of the Equal Pay Program put much of their effort into educational and promotional activities in an attempt to bring employees and employers to a better understanding of the nature and scope of section 11.

The Equal Pay Program also facilitated the development of a total of five sectoral initiatives by 1990, including those involving the Canadian Trucking Alliance, the Air Transport Association, and the Canadian Association of Broadcasters. As part of these initiatives, the Program assisted the employers in these sectors in identifying job evaluation consultants or processes for job evaluation.

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[25] Canada. *Canada Labour Code.* R.S.C. 1985, c. L-2, s. 182. This section incorporates the provisions set out in ss. 249, 250, 252, 253, 254, 255, and 264.

Project '91

A review entitled Project '91 claimed that the Equal Pay Program had been in contact with 1,000 employers, and that they continued to track the progress of over 825 of these. The review also claimed that many of these employers had taken steps to bring themselves into compliance with section 11. One of the results of this review was the publication of a field guide for employers, and the establishment of an audit program.

Audit program implemented.

After 1992, the Equal Pay Program implemented an audit program which would more systematically monitor the progress which employers were making towards achieving pay equity under section 11. The emphasis of this program is on assisting employers to understand the nature of their obligation to move as rapidly as possible towards the achievement of pay equity.

Recent information concerning the Equal Pay Program indicates that on-site "education and monitoring" visits have been conducted with approximately 1,400 employers.

More thorough audits have been conducted of 53 employers who had undertaken pay equity programs. These employers had a total of 16,051 employees. The first step of the audit process is a critical review of the compensation system, the results of which are communicated to the employer. The employer is then given an opportunity to take corrective action.

The Equal Pay Program also carries out on-site inspections, where an employer refuses to take any action as a result of a monitoring visit or audit, or where the employer has not taken action within a reasonable period of time.

In the event of employer recalcitrance, recourse for the staff of the Equal Pay Program under section 182 of the *Canada Labour Code* is to refer the case to the CHRC or to file a complaint. This has been done in four instances.

The Equal Pay Program has 11 staff in regional offices, including five who were recently trained and assigned to the Program. In addition, there are two staff in the central office of the Labour Program of Human Resources Development Canada.

Summary of the Current System

Typical of first generation human rights legislation.

We have described the legislation currently in place in the federal jurisdiction and the administrative mechanisms which are in place to support the pursuit of its objectives. Section 11 is typical of the first generation of human rights legislation which was passed in Canada in the 1970s. The premise is that a clear statement of a human rights principle, supported with a campaign of information and other kinds of assistance, will bring the majority of actors into compliance. The focus is on the assumption that well-informed citizens will do their best to comply with the law, rather than on recourse to the complaint mechanism.

There have been instances where such a general proscription of discrimination has given rise to a coherent body of principles concerning a more particular subject. The development of the principles concerning sexual harassment is perhaps the best example of this. Though there is now specific legislation, along with rules and institutional policies, governing this subject, the now-familiar principles which define sexual harassment and clarify how it demeans women, were drawn initially from a very broad statement that discrimination against women is objectionable. These principles were articulated by the Canadian Human Rights Tribunal and by the courts, in cases like *Robichaud* v. *Canada (Treasury Board)*.[26]

Section 11, it is true, is directed specifically towards the issue of pay equity, and even outlines some of the parameters within which this concept is to be understood. It is clear from section 11 that there is an obligation on an employer not to discriminate against women in the matter of wages.

The degree to which any employer is complying with that obligation, however, can only be tested by an employee or employees who are prepared to bring a complaint.[27] The onus remains on the complainants throughout the process to demonstrate that discrimination has occurred.

Pursuing a complaint through the current system is onerous, particularly in the case of pay equity.

The *Canadian Human Rights Act* Review Panel suggests in its report that the burden of pursuing a complaint through the current system is an onerous one, whatever the nature of the complaint. It is arguable that this is particularly true of pay equity complaints. The basic proposition—that an employer should not pay women differently from men for work of equal value—is not conceptually difficult; nor is it different in nature from other anti-discrimination principles.

Discrimination often assumes subtle or systemic forms.

The identification and redress of any kind of discrimination can be difficult because discrimination often assumes subtle or systemic forms, and there are certainly examples of lengthy and complex proceedings relating to many kinds of discrimination. It is arguable, however, that any attempt to pursue the right to pay equity presents particularly difficult problems. Analysis of the source and scope of any wage gap between male and female workers, and its possible defensibility against the charge of discrimination, is a complex exercise. It requires a clear understanding not only of the character and implications of discriminatory conduct, but of compensation structures, gender-neutral job evaluation systems, human resource management and industrial relations. The technical expertise which is necessary to undertake this analysis is unlikely to be available to individual employees who sense that they are victims of discrimination, and is difficult for trade unions or other representatives of employees to access. Even employers, particularly small employers, may lack the technical expertise for effectively analysing and modifying their compensation practices.

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[26] *Robichaud* v. *Canada (Treasury Board)*. [1987] 2 S.C.R. 84. Another example is the case of *Janzen* v. *Platy Enterprises Ltd.*, [1989] 1 S.C.R. 1252.

[27] Trade unions or equality-seeking groups, such as Femmes-Action, can act on behalf of employees in pursuing complaints.

Assessing the Current System

In the course of our consultation process, we had the benefit of hearing from many people who have had direct experience with the operation of the current system, and who have formed opinions about the effectiveness of section 11 in advancing the objective of pay equity. These participants included workers, employers, representatives of employer and employee organizations, lawyers, members and staff of the Canadian Human Rights Commission and the Canadian Human Rights Tribunal, staff of government departments, consultants, experts who had formulated opinions for use in proceedings under section 11, and other interested observers. The opinions that these participants expressed have been of considerable use to us in evaluating the need for change.

A Positive Legacy

Encouraged more rigorous evaluation of pay patterns.

There are a number of positive things to be said about how section 11 assists employees in the federal jurisdiction to achieve equitable compensation. To begin with, the very fact of explicitly including wage discrimination in the *Canadian Human Rights Act* has provided a framework for discussion of the issue. The importance of this step should not be underestimated. The progress it represents is all the more significant in that section 11 addresses the wage gap as a form of systemic discrimination which may be masked by compensation systems which are supposedly objective or neutral in nature. Section 11 and the *Equal Wage Guidelines, 1986* are founded on the premise that all compensation structures can be usefully examined according to the criteria of gender inclusiveness. This has encouraged a more rigorous evaluation of pay patterns within a framework based on the concept of systemic discrimination.

Section 11 has promoted a new kind of discussion concerning pay equity, founded on a better understanding of its systemic origins, and has supported those pushing for closer scrutiny of the value of work traditionally associated with women.

Created new environment for employers and employees.

The passage of section 11 did more than place pay equity on the public agenda, and officially acknowledge the importance of the rights of female workers to be paid equitably. The adoption of the provision created a new environment for employers and employees in the federal jurisdiction. It is clear from our discussions with participants during the consultation process that they have all become familiar with the vocabulary and concepts associated with pay equity, and that they are accustomed to operating within a framework which includes pay equity as a normal component. We are not suggesting that all employees or all employers within the federal jurisdiction have a sophisticated understanding of the legislation, or that they are all capable of navigating through the waters of pay equity without additional assistance. It is clear, however, that many representatives of employers and employees have gained an extensive working knowledge of pay equity ideas and pay equity language because of the presence of section 11.

An indication of this may be found in the gradual rise of the number of complaints to the Canadian Human Rights Commission under section 11 over the past few years. The complaints filed in 1999 numbered nine; in 2000,[28] however, there were 13, in 2001, 30 and in 2002, 15. These numbers are not large, and they constitute only 1 to 2 percent of the total number of complaints filed with the Commission. Nonetheless, they are indicative of some wider familiarity with the concept of wage discrimination and the recourse available through section 11. It should also be noted that the complaints which have been pursued through the process, though relatively small in number, have affected large numbers of employees, and have addressed important conceptual and procedural issues.

Interface between pay equity and collective bargaining.

The articulation of pay equity as a statutory goal has also lent some support to the trade unions in their efforts to achieve pay equity at the bargaining table. In Chapter 16, we will be examining in more depth the issues surrounding this interface between the concept of pay equity, enshrined in human rights legislation, and the institution of collective bargaining, which is supported by a quite different legislative and institutional regime. The question of the extent to which it is acceptable to put pay equity on the bargaining table and thus to render it subject to the winds of compromise and economic force which are inherently part of that process has been especially controversial. In their discussions with us, trade unions and labour organizations generally indicated that they regard the process of negotiating collective agreements as a less desirable environment for the resolution of pay equity issues than an alternative process supported by strong statutory standards.

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[28] Canadian Human Rights Commission, *supra*, note 14, p. 18.

Nonetheless, in the absence of detailed statutory guidance or direct regulation, some trade unions[29] did choose collective bargaining as a vehicle for obtaining commitments from employers to examine their wage structures in light of their statutory obligations. In a number of collective bargaining relationships, the collective agreement included a commitment to a job evaluation exercise designed to achieve a more equitable pay structure, or a commitment to other means of addressing the wage gap. The wage discrimination provision in the *Canadian Human Rights Act*, along with the provisions regarding other forms of discrimination, contributed to a climate in which these issues became part of the bargaining agenda.

Many employees have benefited.

It should not be forgotten as well that, though there are criticisms to be made of the adequacy of the forms of recourse available under section 11, and many questions about the coverage achieved through this legislation, there have been successful complaints, and many employees in federal jurisdiction have received wage adjustments as a result of section 11. The most dramatic example is the complaint, ultimately successful, of the Public Service Alliance of Canada on behalf of approximately 200,000 employees of the Treasury Board.[30] The success of this complaint was hailed by women's groups as an example of what could be accomplished with statutory support,[31] notwithstanding their criticisms of some aspects of the regime in place under section 11.

For those individual employees who benefited from successful pay equity litigation, the result represented a vindication of their sense of injustice, and validated their sense of their worth as employees. This emotional response cannot replace objective measurements of whether wage discrimination is in fact being corrected. However, it can serve as a reminder of the stake which individual employees have in the outcome of a process which is by nature technical and dispassionate.

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[29] The Canadian Union of Public Employees, for example, has pursued pay equity as a bargaining issue in a number of jurisdictions, including the federal jurisdiction.

[30] *Public Service Alliance of Canada and Treasury Board* (1996) T.D. 2/96 and (1998) T.D. 7/98; *Attorney General of Canada* v. *Public Service Alliance of Canada and Canadian Human Rights Commission* (1999), 180 D.L.R. (4th) 95 (F.C.T.D.). It should be remembered that, although the total amount of the settlement in this case is staggering, the amounts which were received by individual employees were modest, amounting on average to approximately $17,500 per employee over the period of the litigation, which was 13 years.

[31] This case was used as a positive example in the recent submission by the Canadian Feminist Alliance for International Action, *Canada's Failure to Act: Women's Inequality Deepens*, to the United Nations Committee on the Elimination of Discrimination Against Women on the occasion of Canada's 2003 report to that body.

As far as what Pay Equity did for me, it proved that as women, we have a voice, and that due to speaking up we won a battle. For this, I feel that, as a woman, if we stick to our guns, we can get change in whatever we want. I feel that pay equity made us realize that "never say never" and that by being united we can make a difference in our lives. This was a battle that when we won made me take a good look at myself and helped boost my self-esteem in many ways.

Public Service Alliance of Canada (PSAC) member in Nova Scotia, quoted by the Nova Scotia Federation of Labour in its submission to the Pay Equity Task Force, June 18, 2002 p. 3.

The self-esteem issue, surprisingly, hasn't come from the work front, it has come from being able to make life easier at home, in the day to day [...]."

Public Service Alliance of Canada (PSAC) member in Nova Scotia, quoted by the Nova Scotia Federation of Labour in its submission to the Pay Equity Task Force, June 18, 2002 p. 3.

Though other settlements and successful complaints have not had the same kind of public profile as this one, there have been many other cases in which employees have had some success in utilizing section 11 to rectify wage discrimination. In June 2002, for example, a settlement was reached in the case of the complaint filed in 1989 by the Public Service Alliance of Canada (PSAC) against the Government of the Northwest Territories, which contemplated the distribution of $50 million to over 4,000 employees.

Important legacy – body of jurisprudence.

One of the important legacies arising from the complaints brought to date under section 11 has been the body of jurisprudence which has developed at the level of both the Canadian Human Rights Tribunal and the courts. These decisions have contained significant statements concerning the interpretation and application of section 11, and have contributed to a more advanced understanding of the concept of systemic discrimination. Though entanglement in the litigation process cannot be regarded exclusively as a blessing, this process does create opportunities for the systematic examination of issues and the articulation of interpretive principles which participants can look to as a guide for their subsequent conduct.

Over the quarter-century of the life of section 11, there has been considerable elaboration by the Canadian Human Rights Tribunal and by judges of their views concerning the interpretation of section 11 and the *Equal Wages Guidelines, 1986*. In the case of *Public Service Alliance of Canada* v. *Department of National Defence (Non-Public Funds)*,[32] for example, which involved comparisons between classifications of largely female administrative jobs and technical jobs, the Federal Court of Appeal addressed the important issue of the power of the Canadian Human Rights Tribunal to correct wage discrimination retroactively. Though the Court accepted that there must be an evidentiary base for this correction, and that there must be some reasonable limit on retroactivity, it made the following comment about the nature of human rights legislation:

> This view of the inappropriateness of reaching back to redress historical wrongs presumably flows from the Tribunal's view of the reach of paragraph 53(2)(c) on which I have already commented. In my view, it flies in the face of the very foundation of the *Canadian Human Rights Act*. if [sic] tribunals are unable to correct and redress historical wrongs, they have little reason for existence.

Jurisprudence has strengthened understanding of pay equity.

Human rights tribunals and courts have also spoken on such issues as the concept of systemic discrimination; the links between measures designed to eliminate wage discrimination and provisions aimed at other forms of discrimination; the role of technical expertise in determining whether discrimination has occurred and how to rectify it; and the nature of employer responsibility under section 11. All of this jurisprudence has helped enormously in strengthening the participants' understanding of their entitlements and obligations in the context of pay equity legislation.

Technical competence has increased in a number of areas.

Section 11 has led to significant change in other ways: the provision has increased stakeholder knowledge of some of the more technical aspects of gender analysis, job evaluation and pay equity plan implementation. The hard-won acquisition of these skills and experience has been of considerable benefit for those who have had direct experience in working through pay equity issues in the framework created by the *Canadian Human Rights Act*, whether through their involvement in litigation or through their efforts to comply voluntarily with the legislation. Though some of our informants clearly felt that they had paid a high price to acquire this kind of competence, others said that their experience had allowed them to penetrate the atmosphere of mystery surrounding pay equity and had given them confidence that pay equity constitutes a realistic aspiration. As one union representative attending our consultations put it, "We learned that it is possible to do worthwhile job comparisons without some complicated regression analysis."

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[32] *Public Service Alliance of Canada* v. *Department of National Defence (Non-Public Funds)*, [1996] 3 F.C. 789 (F.C.A.).

> At the end of the day, section 11 of the current Act has provided an important and workable mechanism for achieving pay equity. However, this mechanism has tended to require that parties navigate issues without access to critical education and training services—all within an adversarial context. It is important to recognize that, at the outset, the Canadian Human Rights Commission did provide training and education services. However, in the absence of appropriate funding and resource levels for the Commission, this critical component of a successful pay equity model fell by the wayside. Moreover, without access to expeditious enforcement mechanisms on an issue by issue basis, proceedings can drag on for years.
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> Public Service Alliance of Canada (PSAC). Final submission to the Pay Equity Task Force, November 29, 2002, pp. 6-7.

Limitations of the Current Model

Complaint-based approach criticized

Our terms of reference indicate that this Task Force was established in part because "many observers, including the Canadian Human Rights Commission, favour an alternative to the current complaint-based approach to implementing the principle of equal pay for work of equal value." This is not meant to suggest that the passage of section 11 has had no positive effects, or that it has failed to achieve advances towards pay equity for at least some workers in the federal jurisdiction.

The consultations did disclose, however, that those who have observed the operation of section 11 have found, on balance, that it has shown limited effectiveness as a means of meeting the stated objective of ensuring that women are paid as much as men for work of equal value. It is to their criticisms of the complaint-based system under section 11 that we now turn.

Lack of guidance in legislation makes it difficult to interpret and apply.

Focused as it is on the principle that gender-based wage discrimination is unacceptable, section 11 uses very general and open-ended language. Though the Commission provided additional definitions and interpretive rules in the *Equal Wage*

Guidelines, 1986, these were not exhaustively detailed and left many questions unanswered. This form of human rights legislation states a principle and then leaves it to successive interpretations by tribunals to consider the implications of the principle in detail. This approach has led to extensive development in the understanding of the nature and importance of human rights since the appearance of this type of legislation the 1970s. This has also happened to some extent in the case of section 11, but because of the complex nature of the comparisons which must be made to determine whether discrimination has occurred, the lack of guidance in the legislation has made it difficult to interpret and apply the provisions in a consistent way.

Lack of clarity in legislation encouraged an adversarial climate.

The absence of clear standards and criteria in the legislation seems to have had a number of undesirable effects. One assumes that an underlying goal of section 11 was to encourage employers to make voluntary efforts to comply with the law and to remove wage discrimination once they became aware of it. The uncertainty surrounding the exact nature of employer obligations and the possible consequences of non-compliance had in some cases the opposite effect. It encouraged an adversarial approach in which both employers and the representatives of their employees were continually conscious of potential challenges to any pay equity plan, and in some cases clearly inhibited the development of such plans on a voluntary or collaborative basis.

The Bell Canada case is an instructive one in this respect. After a complaint was filed by Bell employees in 1988, the company and the unions representing the employees agreed in 1991 to enter into a joint study which could be used as the basis of a pay equity plan. Both the company and the unions invested considerable time and other resources over two years while the study was being completed. In the context of the complaint process, however, Bell decided in 1995 that the joint study was flawed, and disputed any further use of it as the basis for the settlement of the complaint.

More than 400 pay equity complaints filed since 1997.

Between the enactment of section 11 in 1977 and the tabling of the CHRC's special report to Parliament in February 2001, slightly more than 400 complaints were filed with the Commission.[33] Although the majority of these complaints were dismissed, a number of settlements were reached, covering in total about 1,500 employees.

Pay equity litigation – lengthy and costly.

In a number of significant cases, however, the complaints were referred to the Canadian Human Rights Tribunal, and in these cases the litigation proved to be lengthy, costly and hard-fought.

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[33] Canadian Human Rights Commission, (2001), *supra*, note 7.

Allegations of human rights violations often produce a strong defensive reaction by those standing accused. In the case of pay equity, the technical complexities of the litigation created numerous occasions for differences of opinion between the parties, and tended to draw out the proceedings.

Lack of guidance on acceptable standards, methodologies and processes encourages litigation.

Litigation concerning pay equity complaints cannot be completely streamlined or simplified, given that technical information is required for any assessment of wage discrimination. It is unrealistic, then, to suppose that any statutory regime can eliminate the need to determine difficult interpretive and methodological issues. It must be said, however, that the relative lack of any precise guidance with respect to acceptable standards, methodologies or processes for achieving the objective set out in section 11 has had the effect, in this context, of leaving virtually all issues open to dispute and discouraging the parties from committing themselves to any position outside of the venue of litigation.

Since there was no approach which was clearly unacceptable according to the statute, the parties made immense investments in trying to demonstrate that the particular approaches they favoured were reasonable, and that they were consistent with a proper interpretation of section 11. In order to demonstrate that a particular methodology would meet the sketchy criteria in the *Equal Wages Guidelines, 1986*—gender neutrality, capacity to measure the value of all jobs, and capacity to measure skill, effort, responsibility and working conditions—the parties to the litigation, including the Canadian Human Rights Commission, felt it necessary to have an extensive technical analysis done of their approach, and to put forward considerable expert testimony. In *Attorney General of Canada* v. *Public Service Alliance of Canada,*[34] the court commented that, in the course of the lengthy hearing before the Tribunal, some of the expert witnesses had given testimony for weeks or even months.

Vagueness of legislation led to questions of an interpretive and procedural nature.

These substantive issues would have been difficult enough for the parties and the Tribunal, but the vagueness of the legislation also invited questions of an interpretive and procedural nature. The course followed by the major complaints dealt with by the Commission and the Tribunal was marked by frequent applications to the courts for procedural guidance. In the *Bell Canada* case alone, there were applications concerning the timeliness of the complaint, the standing of trade unions to bring complaints, the use of particular statistical techniques, the authority of an investigator to add new issues, the amendment of particulars of the complaint, the independence of the Tribunal, the status of the *Equal Wages Guidelines, 1986*, the scope of employer privilege, and the retention of particular legal counsel. These applications themselves raised questions of considerable difficulty, and often brought about lengthy interruptions of the proceedings.

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[34] *Attorney General of Canada* v. *Public Service Alliance of Canada*, (1999), 180 D.L.R. (4th) 95 (F.T.D.).

In the Bell Canada case, as alluded to above, the Government of Canada decided to amend the *Canadian Human Rights Act* following the outcome of the original application concerning the independence of the Canadian Human Rights Tribunal. This legislative process was, of course, a source of further delay. Though the legal issues which were the subject of successive applications by the employer were eventually resolved, the hearing of the complaint itself is not complete.

A dysfunctional system.

The parties who brought these applications (nearly always employers) cannot be faulted for making use of these opportunities to raise issues for which there were no satisfactory answers in the legislation. It is difficult to avoid the conclusion, however, that there may be something dysfunctional about a system which is characterized by a procession of applications of such number and variety as those which have attended the consideration and adjudication of complaints under section 11.

Processing and hearing of complaints – protracted, expensive and frustrating.

The processing and hearing of these complaints was extraordinarily protracted and expensive for those involved, and frustrating for those employees whose compensation was at issue. The 1999 decision of the Federal Court of Canada brought to an end the complaint made by the Public Service Alliance of Canada (PSAC) against the Treasury Board in 1984. Another complaint filed by the PSAC against the Government of the Northwest Territories in 1989 was settled in 2001. The complaint brought by the Canadian Telephone Employees Association (CTEA), the Communications, Energy and Paperworkers Union (CEP) and Femmes-Action against Bell Canada in 1989 has still not been finally determined. The Canadian Human Rights Tribunal convened a hearing of a complaint filed by the PSAC against Canada Post in the fall of 1992; after 385 days of hearings, this proceeding is not yet at an end, and was adjourned pending the outcome of the judicial proceedings in the Bell Canada case.

The length of time taken to arrive at a final determination of these complaints is perhaps the single most striking feature of the operation of the current system, leading Mr. Justice Pelletier of the Federal Court to observe on one occasion:

> By all appearances, pay equity claims are like education savings plans: they are investments made by one generation for the benefit of the next.[35]

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[35] *Bell Canada* v. *Canadian Telephone Employees Association*, [2000] F.C.J. No. 947.

The fact remains that a group of people earning at least six figures per year in addition to paid expenses decided to fight the decision to give us our equal pay. As a result, many years passed and many of the people entitled to receive their equal pay became ill—sometimes too ill to enjoy it, or many passed away—never to see or enjoy what should have been in their possession.

Deborah Young, Canadian Food Inspection Agency (CFIA) member.

In 1989 the Pay Equity Study was finished and the findings were conclusive that the Groups in the study were not being paid Equal Pay for Work of Equal Value. Then came the Court challenges, delays, appeals by Treasury Board, etc., and the years passed and settlement appeared to be farther and farther away. I kept praying that I would live long enough to actually receive a settlement cheque.

Mary Swinemar, retired Public Service Alliance of Canada (PSAC) member. Submission to the Pay Equity Task Force, June 17, 2002, p. 2.

Protracted litigation created frustration and anxiety.

From the point of view of the representatives of trade unions and employers who were parties to these proceedings, and who commented on their experience in their discussions with us, the protracted litigation created frustration and anxiety. Over time, the information which was originally available to support or challenge the complaint became outdated and new information had to be gathered and incorporated into the cases being presented. The focus on the litigation drew away resources and concentration from other workplace objectives for both sides. Representatives of all parties faced increasingly restive and agitated constituents, and the adversarial nature of the proceedings exacerbated the tensions which had been one of the motivations behind the initial complaint.

For the employees whose compensation was being considered, it was difficult to bear the delay in a definitive response to the complaint when they were aware that they might be entitled to additional compensation. In the course of our consultations, some of these employees told us stories about how their own lives had been affected by the delays in the proceedings. One employee recounted how difficult it was for her to make decisions about whether to pursue an early retirement on medical grounds without full knowledge of what her financial resources would eventually be. Another said that she wonders whether her husband, suffering from a terminal illness, might have survived longer without the stress created by the knowledge that, according to the complaint filed on her behalf, she should be receiving higher wages. Although she was grateful for the increase when it finally came, she felt that it could have been put to better use during those years of extreme family crisis.

Justice delayed is justice denied.

For these employees and others like them, the old adage "justice delayed is justice denied" had a strong resonance, given the impossibility of making people whole for all of the consequences of delay in this kind of situation. For a number of employees, the adage was literally true, as they did not live to see the success of the claims filed in their names. In the stories we have cited, the delays in the pay equity proceedings were not the only cause of the distress or hardship suffered, but the employees did identify these delays as one of the factors aggravating their situation.

From the perspective of the Canadian Human Rights Tribunal, proceedings of this magnitude became exceedingly difficult to manage. Scheduling hearing dates over such long periods of time—and in particular accommodating the schedules of lawyers, part-time tribunal members and expert witnesses—was one problem. Handling the volume of documents and other evidence associated with the proceedings was another. The number of days consumed by the hearings themselves—in the case involving the Public Service Alliance of Canada and Treasury Board, the hearing went on for over 374 days—must inevitably have made it difficult for the hearing panel to maintain a comprehensive understanding of the case as a whole, and to assemble all of the information into a coherent decision when the hearing was over.

The members of the Canadian Human Rights Tribunal were selected for their experience and expertise in the human rights field. This did not necessarily include any background in compensation systems or the methodologies of job evaluation. Given the time-consuming, complex, unpredictable and protracted nature of the hearings concerning pay equity complaints, members could not practically be assigned to more than one of these cases. This meant that the expertise which accrued to members from hearing these complaints was not applied to the consideration of other pay equity cases.

Half of CHRC's legal services budget spent on pay equity cases.

Proceedings of such a tortuous kind were, of course, extremely expensive. Employers, trade unions and the Canadian Human Rights Commission expended huge amounts of money on legal counsel, the preparation of materials and the gathering of information for the hearings, and the work of expert witnesses and consultants. In the case of the Human Rights Commission, the legal costs associated with the pay equity complaints, which represented less than 8 percent of the total number of complaints addressed by the Commission, accounted for over half of the total amount spent by the Commission on legal services.[36] These cases also absorbed a considerable proportion of the resources of the Canadian Human Rights Tribunal. The hearings of the complaints by the Public Service Alliance of Canada against Treasury Board and Canada Post have each cost the Tribunal close to $3 million, including a calculation for staff time devoted to these hearings. The case involving the Government of the Northwest Territories cost around $1.3 million. In a report on budgetary planning for 2001-2002, the Tribunal noted that their planned spending on all other aspects of their programs was approximately $2.5 million, and that they had not yet been given approval for their estimations of expenditure for pay equity cases.[37]

Employers also face the possibility that the complaint will be upheld and that they will have to bear the considerable cost of wage adjustments at the end of the process. Under the interpretations given to the legislation, these wage adjustments would take effect retroactively at least from the date the complaint was filed. Though there may have been some hope that this would provide an incentive for the parties to resolve the complaint efficiently so that the size of this retroactive liability would be minimized, it seems instead to have created an incentive for employers to resist complaints vigorously, and to raise all of the defences and objections possible.

In the case involving the Public Service Alliance of Canada and Treasury Board, the employer was eventually ordered to pay a total of $3.5 billion to over 200,000 employees. Though this is an extreme example, other large employers have faced the possibility that they will have to pay large amounts, the exact figure often being uncertain until the final disposition of the complaint. For the Government of the Northwest Territories, the $50 million which they are required to pay under the settlement of the complaint against them constitutes a considerable financial obligation.

A large final payout of the kind which faced the Treasury Board in 1999 created other problems besides cost to the employer. The administration of the allocation and payment of $3.5 billion created further difficulties, many of which were brought to our attention by individual employees who made presentations at our public hearings. The payment of the entire wage adjustment as a lump sum in a single tax year created a large tax burden for these employees and in many cases made them ineligible for other benefits such as the Child Tax Credit, the Guaranteed Income Supplement, daycare subsidies and some kinds of disability payments.

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[36] Canadian Human Rights Commission, *supra*, note 7, p. 10.

[37] Canadian Human Rights Tribunal. (2001). *2001-2002 Estimates. Report on Plans and Priorities.*

In the face of the huge burden of calculating and making payments to eligible employees, departmental human resources units had little capacity to provide employees with advice about how they could roll over their payments into RRSPs, or how the payments might affect their pension entitlements.

> The Pay and Benefits Department of Statistics Canada became like Fort Knox. No one was allowed to go ask questions...we were bluntly told that if we did ask questions, it would only hold up the process of getting us our cheques and they were under very strict guidelines for dates for this to happen.
>
> Michele Rodgers, member of the Public Service Alliance of Canada (PSAC).

These employees still viewed the final resolution of their pay equity complaint as a significant victory, but the satisfaction resulting from that victory was much diminished by the confusion and the problems which surrounded the implementation of the award.

We have been speaking here of the criticisms which have been levelled at the current system by those who have had direct experience with the complaint process. This focus on the hardships of the complaint process, however, should not be allowed to obscure another issue—that is, whether the legislation has had a consistent or comprehensive impact across the federal jurisdiction.

Participation by an unassisted individual is virtually impossible.

In a system such as this one, where lodging a complaint is the sole recourse for aggrieved employees, the onus rests on those employees or their representatives throughout the process to demonstrate that discrimination has occurred and to give some indication of its gravity. Our description of the complexity and expense of the complaint process under section 11 will make it evident that participation by an unassisted individual is virtually impossible.

> [TRANSLATION] It is sufficient to mention that because of the system, a complaint must be filed for any action to be undertaken. The burden of proof rests on the complainant. Without resources and without support, it is almost impossible to succeed on one's own.
>
> Québec Federation of Labour (FTQ). Presentation to the Pay Equity Task Force, April 23, 2002, p. 4.
>
> [TRANSLATION] It is up to women to prove that the employer is using discriminatory practices in establishing the wage structure. This approach thus depends on the ability of individuals to bring a complaint.
>
> National Confederation of Trade Unions (CSN). Presentation to the Pay Equity Task Force, June 21, 2002, p. 7.

We have already alluded to the total number of complaints which were filed with the Canadian Human Rights Commission under section 11. Of those 400 complaints, many were rejected on the grounds that they were not eligible—for example they may have raised employment equity issues. The preponderance of these complaints were brought by individuals, and some were settled, presumably to the satisfaction of the complainants. However, this still means that relatively few complaints have been brought over the life of section 11, and very few individual complaints, as opposed to complaints brought on behalf of employees by trade unions, were pursued to a conclusion.

Some unions were successful.

Trade unions did pursue some complaints against larger employers and, as we have seen, some unions succeeded in bringing wage structures more into line with the principles of pay equity.

Not all activity in support of pay equity under section 11 was carried out in the framework of the complaint process, of course. The Equal Pay Program at Human Resources Development Canada has claimed some success, through its audit program, in bringing employers into compliance with section 11.

Though the statistics recorded by the Equal Pay Program indicate that contact of some kind has been made with more than 1,000 employers, it is not clear that the nature of the contact has gone beyond the provision of information and educational materials. The data also show that audits have been completed for 53 employers.

In conducting its educational and audit activities, the Equal Pay Program focuses on advising employers of their statutory obligation not to discriminate and encouraging them to institute a job evaluation process which will allow them to identify and correct discriminatory wage patterns.

Available information on the Equal Pay Program gives no indication that the Program provides for the establishment of standards for acceptable job evaluation systems or wage adjustment methodologies, the evaluation of pay equity procedures for gender bias, or any assessment of the outcomes of the process in the form of actual wage adjustments or modified pay structures.

The education and exhortation which has been carried out under the Equal Pay Program may have had some positive effect, though this is difficult to assess, given the absence of results-oriented targets for the program. The program in this form does not, however, provide an adequate basis for a fully effective pay equity regime.

Legislation which relies exclusively on voluntary compliance with recourse to a complaint mechanism is inadequate.

In Chapter 5, we will be discussing why we have concluded that legislation which relies exclusively on voluntary compliance with recourse to a complaint mechanism is inadequate as a means of making serious progress towards the objective of pay equity. There may be instances in which employers have voluntarily acknowledged their obligations under section 11 and have embarked in good faith on efforts to eliminate wage discrimination for their employees. The experience related to us during our consultation process indicates, however, that this is unusual, and that it is vastly more common for employers to refrain from taking any positive steps until they are faced with a challenge or complaint.

Many employees, particularly non-unionized ones, are effectively excluded.

Even if one accepts the most generous estimate of the impact of the complaint handling provided by the Canadian Human Rights Commission, adjudication by the Canadian Human Rights Tribunal and the courts, and the audit program at HRDC, one would still have to conclude that thousands of employers in the federal jurisdiction, including many large employers, have remained untouched by the system currently in place. Similarly, one must conclude that many employees, particularly those not unionized, are effectively excluded from any recourse under the statute.

> Since only those employers [are affected] who face complaints or deal with unions which have demanded pay equity, the "playing field" is not level.
>
> Canadian Labour Congress (CLC). Final submission to the Pay Equity Task Force, November 2002, p. 3.

The uneven coverage arising from the pay equity provisions of the *Canadian Human Rights Act* clearly creates problems for employees deprived of effective recourse against pay discrimination. However, it also is equally problematic for private-sector employers who have adjusted the wages of their employees, whether voluntarily or because of a successful complaint. As one writer has pointed out:

> It disadvantages individual employers in a sector if a complaint is upheld against them while their competitors are complaint-free.[38]

Cutbacks limited the ability of the CHRC and other agencies to carry out their mandate under section 11.

A final point must be made about the resources available to the agencies responsible for promoting and administering the policy set out in section 11. Though the regime of fiscal restraint which prevailed at the federal level throughout the 1990s was not, of course, limited in its scope to agencies concerned with human rights, these cutbacks did limit the ability of the Canadian Human Rights Commission and other agencies to carry out their mandate under section 11. For example, the Commission experienced a 20-percent budget reduction between 1993 and 1997.[39] The Labour Program of HRDC experienced budget reductions as well; though some resources have recently been restored to the Equal Pay Program, the activities of that Program had for over a decade been curtailed in response to financial exigencies. Though we are not persuaded that the regime in place under section 11 would have been an effective vehicle for achieving pay equity even if greater resources had been available, there is no doubt that these agencies were hamstrung in carrying out their mandate by the fiscal restrictions.

Conclusion

In its time, section 11 represented an effort to enshrine the principle of pay equity in workplace relationships falling under federal jurisdiction. This legislation did have some success at placing pay equity on the agenda for parties to these relationships, and lending important support to those who wished to challenge wage discrimination.

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[38] Judith Davidson-Palmer. (2002). *Assessing Pay Equity Implementation, Monitoring and Enforcement Models*. Unpublished research paper commissioned by the Pay Equity Task Force, December 2002, p. 6.

[39] Canadian Human Rights Commission. (1997). *Annual Report 1996*. Ottawa: Public Works and Government Services Canada.

> While commending the State party's efforts directed towards the implementation of the principle of equal pay for work of equal value, the Committee notes with concern that the auditing process is too slow [...].
>
> Committee on the Elimination of Discrimination against Women (CEDAW). Response to Canada's fifth periodic report, *Draft Report,* Twenty-eighth session, Advanced Unedited Version, 13-31 January 2003, paragraph 51, p. 8.

Current system inadequate for significant and systematic progress towards the goal of pay equity.

On the whole, however, we have concluded that the regime in place under section 11 has provided an inadequate foundation for significant and systematic progress towards the goal of pay equity across the federal jurisdiction as a whole. Those who took part in our consultation process—workers, trade unions, employer representatives, equality-seeking groups, government officials and tribunal members—do not always agree on the details of acceptable changes. Yet, there was virtually universal agreement among them that the current system does not constitute an effective means of advancing towards equitable wages. They have experienced frustration, uncertainty, lengthy delays, an acrimonious atmosphere, and staggering costs associated not only with the outcome, but with the very process itself. Most importantly, perhaps, the process has proved inaccessible to a large number of workers, many of them the most vulnerable.

Current system is not effective.

We believe that the history of section 11 has demonstrated that adequate pay equity legislation cannot be based on the assumption that the majority of employers will voluntarily take meaningful steps towards achieving pay equity. To be sure, this may in part be explained by the incapacity of many employers to deal with the technical aspects of pay equity issues. However, the fact remains that the current system has not been effective in ensuring that employers in the federal jurisdiction are taking steps to eliminate wage discrimination in their workplaces.

In its report on pay equity, *Time for Action,* the Canadian Human Rights Commission made the following comment:

> However, experience since has shown that complaints are not particularly well-suited to addressing forms of discrimination that are subtle, largely unintentional and integrated into complex systems—what is now termed "systemic discrimination."

We find ourselves in agreement with this conclusion and, in Chapter 5, we will be recommending that a new model be adopted in order to make it possible for Canada to comply with its international and domestic commitments to the principle of equal pay for work of equal value.

Chapter 4 – The Proactive Model

The proactive model does not rely on complaints.

The proactive approach to pay equity is different from the traditional complaint-based model of pay equity in that it does not rely on a complaint to initiate a pay equity review. It places positive obligations on employers to review their compensation practices, identify any gender-based inequities, and take steps to eliminate them. Unlike the complaint-based approach, the proactive approach also includes timeframes for the elimination of any inequities. It is a systemic approach to a systemic issue.

Faced with the realization that the complaint-based model is ineffective, several provinces have gradually adopted proactive pay equity legislation. This development is also attributable to the little ground gained by another model, the voluntary model. Many studies have shown that, with respect to equality, few employers voluntarily implement either employment equity or pay equity plans.

The objective of the proactive model is to provide coverage to as many women as possible who are victims of wage discrimination. Whereas a complaint deals only with the case of the complainants, a proactive approach may be applied more broadly throughout organizations and even across industrial sectors.

With the proactive model, the onus is on the employer to identify discriminatory wage gaps; with the complaint-based process, employees must take responsibility for doing so. This can have a particularly adverse effect on female workers who are not represented by a union and who may not have access to the necessary expertise or financial means to file a pay equity complaint.

Proactive model favours cooperation over confrontation.

By moving away from a complaint-based pay equity process, the proactive model aims to avoid the confrontational approach that has marked discrimination cases brought before human rights commissions or the courts. As noted by Nan Weiner:

> A proactive approach does not assume guilt of those involved in setting salaries/wages. It recognizes the systemic nature of the problem and requires organizations to examine their wage determination systems and, if any inequities are found, to redress them.[1]

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[1] Nan Weiner. (2002). "Effective Redress of Pay Inequities." *Canadian Public Policy – Analyse de Politiques*, Vol. 28, May 2002, Supplement 1, pp. S101-S115.

The proactive approach also aims to reduce the long delays and high costs that have been associated with pay equity cases, including the substantial cost associated with the retroactivity of salary adjustments with interest.

These are some of the reasons why the proactive model was adopted, first by Manitoba in 1985, then by Ontario, Nova Scotia, Prince Edward Island and New Brunswick, and finally by Quebec in 1996.

The Characteristics of Proactive Models

Proactive pay equity laws specifically target discrimination in female jobs.

The purpose of the proactive pay equity laws adopted so far in Canada is to correct the wage gaps that result from systemic gender discrimination. These laws specifically target discrimination against those who work in predominantly female jobs. They aim for equality of results, not just equality of opportunity. Such legislation not only requires employers to amend their human resource systems and practices and to eliminate any discriminatory aspects, but lays down the obligation to correct wage gaps and to pay the necessary wage adjustments. Proactive pay equity legislation applies a basic formula transposed from the business world to pay equity: it judges the effectiveness of an action plan not just by decisions made or by changes in practices, but by specific results.

The systemic nature of wage discrimination against women has been well documented, as shown in Chapter 1 of this report. Proactive pay equity legislation applies a systemic remedy to a systemic problem.

An important characteristic of proactive pay equity legislation is the provision for participation of employee representatives in the pay equity implementation process within organizations. This participation may take several forms, as we will discuss in Chapter 8. Proactive legislation is intended to substitute a cooperative approach for the highly conflictual process that typically characterizes the complaint-based model.

The proactive process involves a number of distinct steps.

Under proactive legislation, pay equity is achieved by implementing a pay equity plan, generally formulated on the basis of the following steps:

- determination of job classes and their gender predominance;
- identification of the evaluation process, method and tools;
- actual evaluation of these job classes;
- wage comparisons and identification of wage gaps;

- determination of the method of payment for salary adjustments;
- payment of salary adjustments.

Proactive legislation provides more clarity than complaint-based legislation.

In response to criticism regarding the lack of clarity associated with the complaint-based model, and the resulting difficulties, most proactive legislation includes specific criteria related to the implementation of pay equity. The history of proactive legislation itself shows an evolution. The most recent proactive pay equity legislation in Quebec includes provisions that are more detailed than those in previous Canadian legislation. However, as the effects of that legislative initiative become clear, stakeholders are finding shortcomings and several have emphasized to the members of the Task Force the need for even greater detail.

These laws also include a timeframe that is twofold: the first phase consists of creating the pay equity plan, the second of scheduling wage adjustments. The reason for the prescribed timeframe is to avoid the lengthy delays associated with the conventional complaint-based model. Some legislation does not provide a deadline regarding payment of the wage adjustment, which stands opposed to the right to quick redress.[2] Nor do existing statutes specify a start date. However, some stakeholders argued that establishing a start date for this exercise is crucial to ensuring that pay equity is achieved within the prescribed timeframe. This step would prevent situations where employers, overly confident of achieving pay equity quickly, would start the exercise too late, and consequently would not meet the deadline.[3]

Proactive Legislation in the Public Sector

This section provides an overview of the four jurisdictions in which proactive legislation applies only to the broader public sector, including, in most cases, the parapublic sector and Crown corporations.

Manitoba

1985: Manitoba's legislation was a model.

Manitoba's proactive *Pay Equity Act*,[4] which came into force in 1985, encompasses the public and parapublic sectors as well as Crown corporations. Manitoba served as a model for other jurisdictions, particularly with respect to the content of a pay equity plan, the tools used, union involvement, and the role of the body responsible for enforcing the legislation.

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[2] Judith-Davidson Palmer. (2002). *Assessing Pay Equity Implementation, Monitoring and Enforcement Models*. Unpublished research paper commissioned by the Pay Equity Task Force, p. 19.

[3] Confédération des syndicats nationaux (CSN). Presentation to the Pay Equity Task Force, June 2002, p. 9.

[4] Manitoba. *Pay Equity Act*. C.C.S.M. c. P13 1985.

The pay equity process is more successful with union involvement.

As shown in Table 4.1, the results of the Manitoba experience indicate that salary adjustments ranged from 1.97 percent to 3.30 percent of payroll for the employers studied. The gender wage gap was reduced by half when a union was involved, dropping from 14 percent to 7.0 percent. However, for all jobs, unionized and non-unionized, the wage gap fell from 18 percent to 13 percent. This difference reflects the findings of many practitioners and researchers that the process is more successful in achieving the objective of pay equity when a union is involved.

Table 4.1: Pay equity results in Manitoba

Employers	Civil Service	Universities	Crown Corporations
Plan deadline	1990	1991	1992
Number of employees covered	5,000	1,950	3,324
Amount of the wage adjustment	$1.87/hour	$2.01/hour	N/A
Percentage of payroll	3.30%	2.33%	1.97%

Source: Province of Manitoba. *Update on Pay Equity.* February 1994. Unpublished.

The courts found one aspect of Manitoba's legislation—the ceiling on salary adjustments—to be unconstitutional. The Manitoba *Pay Equity Act* had originally stipulated that salary adjustments could not exceed 4.0 percent of the employer's payroll. The provision was contested by unions representing health care workers and was deemed contrary to section 15 of the *Canadian Charter of Rights and Freedoms.*

Nova Scotia

1988: Nova Scotia's law covers the public and parapublic sectors, and Crown corporations.

Nova Scotia's *Pay Equity Act*[5] came into force in 1988 and applies to the public and parapublic sectors as well as to Crown corporations. It was applied gradually to three separate groups:

1. Civil servants and the employees of certain hospitals
2. Crown corporations, school boards and employees of hospitals not included in the first group
3. Universities, municipalities and municipal organizations

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[5] Nova Scotia. *Pay Equity Act.* R.S.N.S. 1989, c. 337, s. 1.

Adjustments for the first group varied broadly, ranging from $404 to $9,945, and benefited 53 of the 73 predominantly female job classes. In the second group, there were few adjustments and these involved only eight of 44 hospitals, owing to a lack of male comparators. This result may seem surprising at first sight, but is due to a specific provision of Nova Scotia's legislation. The provision excludes any job class with fewer than 10 employees, and predominantly male job classes are often set apart and include a small number of incumbents. A 1994 estimate indicates that, in the second and third groups, given the minimum size for a job class, no more than 10 percent of employees covered under the legislation would receive a salary adjustment.[6]

Adjustments benefited 53 of 73 predominantly female job classes.

Prince Edward Island

Prince Edward Island's *Pay Equity Act*[7] came into force in 1988 and applies to the public and parapublic sectors. It provides for a maximum timeframe of six years: no more than two years to create the pay equity plan and four years to finish payment of salary adjustments. The average adjustment was $3,120 per year, representing 4.91 percent of the total payroll in the sectors covered. This high percentage results no doubt from the legislation's greater flexibility in terms of methodological options for achieving pay equity.

1988: PEI's law covers the public and parapublic sectors.

New Brunswick

New Brunswick's Pay Equity Act[8] came into force in 1990. It applies only to the Public Service and to certain government organizations. An analysis of its results shows that 96 percent of targeted job classes received adjustments.[9] Although the Act stipulates that a job class must include at least 10 employees, exceptions have been provided for. A lack of available data makes it difficult to comment on the results of this legislation.

1990: New Brunswick's law covers the public sector and some Crown organizations.

Currently, the Coalition for Pay Equity[10]—a group of organizations and individuals in New Brunswick—is lobbying the government to pass proactive, universal pay equity legislation, while, at the same time, public authorities are also examining the issue.

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[6] Susan Genge. (1994). *Pay Equity in Canada: What Works? Trade Union Pay Equity Practitioners Examine Their Experiences.* Report prepared for Human Resources Development Canada (HRDC) and the Canadian Labour Congress Ad Hoc Pay Equity Committee, pp. 4-12 to 4-14.

[7] Prince Edward Island. *Pay Equity Act.* R.S.P.E.I. 1988, c. P-2.

[8] New Brunswick. *Pay Equity Act.* R.S.N.B. 1989, c. P-5.01.

[9] Susan Genge, *supra,* note 6, pp. 4-10.

[10] Coalition for Pay Equity website at www.equite-equity.com.

Proactive Legislation Targeting All Economic Sectors

Ontario's *Pay Equity Act*

1988: Ontario's proactive legislation is the first to apply to the private sector as well as the public sector.

Ontario's *Pay Equity Act*[11] came into force in 1988 and is the first proactive legislation to apply to the private sector. It applies to organizations with 10 or more employees and allows for flexible implementation based on the sector and the size of the organization. Thus, the public sector and employers with 500 or more employees were supposed to have finished developing their pay equity plans on January 1, 1990. Organizations of 100 to 499 employees were to have finished developing their plans on January 1, 1991. Payment of the wage adjustments was to begin as soon as the plan was posted and be made at a rate of 1 percent of payroll per year. All payments in the public sector were required to be finished by January 1, 1995, but no deadline was set for the private sector.

Finally, organizations with 10 to 99 employees could choose between two options:

- Not to post their pay equity plan and pay all necessary adjustments by January 1, 1993, for organizations of 50 to 99 employees and by January 1, 1994, for smaller organizations; or
- To post their plan, which would allow them to phase in payments at a rate of 1 percent of payroll per year.

Flexible provisions based on organizational characteristics certainly offer advantages, as they allow the agency responsible for enforcing the Act to begin by concentrating on a certain number of organizations, then to gradually widen its scope of intervention. However, overly flexible criteria may create a certain amount of confusion for stakeholders with regard to the obligations specific to each type of organization.

When the Act came into effect, an independent Pay Equity Commission was created that consists of the Pay Equity Office and the Pay Equity Hearings Tribunal. The objective of the Pay Equity Office is to facilitate implementation of the Act by developing timely information material, particularly guidelines, and by establishing training programs and tools. It also investigates, mediates and resolves complaints under the *Pay Equity Act*.

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[11] Ontario. *Pay Equity Act*. R.S.O. 1990, c. P.7.

The most contentious cases that raise new and complex issues are referred to the Pay Equity Hearings Tribunal. A number of the Tribunal's decisions on important aspects of pay equity, such as neutrality of job evaluations, for example, are now used as a reference for stakeholders in this area.[12]

Universality of the Scope of Application

Ontario's legislation applies to all economic sectors and theoretically targets all workers in predominantly female job classes. However, one major problem arose from the outset: in some workplaces, no male comparator was available for estimating wage gaps. Since the individual job-to-job wage comparison method turned out to be highly restrictive in several cases, a 1993 amendment to the legislation introduced the proportional value comparison method.[13] As well, in several predominantly female sectors such as social services, the apparel industry and retail trade, it was impossible to identify male comparators within the same organization. Thus, another 1993 amendment introduced the possibility of using proxy[14] comparisons, but only in the broader public sector, leaving unresolved the situation of female workers in private-sector organizations without male comparators. In 1996, the new Conservative government abrogated the provisions for proxy comparisons. However, these provisions were reinstated in the legislation in 1997, following a ruling by the Ontario Superior Court of Justice.[15]

1994: introduction of proportional value and proxy comparison methods.

Flexibility

The legislation was intended to be flexible so that it could be adapted to various workplaces. This flexibility is reflected, for example, in the establishment of gender predominance in job classes where the Act provides for three potential criteria. In addition to a statistical threshold, historical incumbency and gender stereotypes may be considered. Subsection 1(5) of the Act indicates:

Ontario legislation includes three criteria for determining gender predominance.

> 1 (5) In deciding or agreeing whether a job class is a female job class or a male job class, regard shall be had to the historical incumbency of the job class,

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[12] See, for example, the reference to *Haldimand-Norfolk (No. 6)* (1991), 2 P.E.R. 105 in Chapter 10.

[13] The proportional value method allows female and male job classes to be compared even though the jobs are not perfectly matched.

[14] The proxy method is used when there is no male comparator within an organization. It allows the organization to find male comparators in an external organization.

[15] *Service Employees International Union, Local 204* v. *Attorney General of Ontario*. (1997), 35 O.R. (3d) 508.

> gender stereotypes of fields of work and such other criteria as may be prescribed by the regulations.[16]

Flexibility is also reflected in the identification of evaluation methods, where requirements are fairly limited. The amendments that allow for the use of complementary salary adjustment methods are also an indication of flexibility, as is the fact that small organizations may choose not to post their pay equity plan or select another option.

Participation

Under the Ontario legislation, unions must be involved.

Ontario's legislation stipulates that, where there is a union, the pay equity implementation process must be conducted jointly. The role of unions is particularly important, as Morley Gunderson explains:

> In proactive systems (such as Ontario) that do not rely on complaints, unions can be especially important in providing information in areas such as job evaluation, finding appropriate comparator groups, the appropriate definition of the employer and pay (including non-wage compensation), estimating pay lines, determining exemptions and exclusions, and representing workers before tribunal hearings.[17]

Joint committees allow for better control of compliance.

As certain authors note, establishing joint committees to develop pay equity plans allows for better control in ensuring that they are in compliance with the requirements of the legislation.[18]

In non-unionized organizations, there is no obligation to involve employees.

In non-unionized organizations, however, the employer prepares the pay equity plan alone and must post it. There is no obligation to involve employees. The posting of plans, which is mandatory in public organizations and in private organizations of 100 or more employees, can be considered an indirect form of limited participation. In fact, after the posting, the employees have 90 days to review the plan and submit their comments to the employer. The employer then has seven days to respond in a new posting. If the employees deem the employer's response to be unsatisfactory, they have 30 days to file a notice of objection.

Pay Equity Maintenance

In Ontario, employers must maintain pay equity once achieved.

Ontario's *Pay Equity Act* includes an obligation to maintain pay equity once it has been achieved. However, it neither specifies the types of change that may affect maintenance of results nor, a fortiori, the means of responding to them. Only one case is mentioned, that of negotiating a new collective agreement. The Act allows for the creation of new wage gaps as the result of bargaining power, although it seems this provision is rarely applied. Some participants in our consultation process noted that the lack of specific guidelines regarding maintenance has led to a great deal of uncertainty, mainly due to the many rapid changes resulting from economic restructuring.

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[16] Ontario, *supra*, note 11.

[17] Morley Gunderson. (2002). "The Evolution and Mechanics of Pay Equity in Ontario." *Canadian Public Policy – Analyse de Politiques*, Vol. 28, May 2002, Supplement 1, p. S127.

[18] Judith A. McDonald and Robert J. Thornton. (1998). "Private-Sector Experience with Pay Equity in Ontario." *Canadian Public Policy – Analyse de Politiques*. Vol. 24, No. 2, 1998, p. 195.

Control and Auditing

The Ontario legislation does not require employers to submit reports to the Pay Equity Commission. The Pay Equity Commission may, however, audit organizations. In 1995 it had planned for an audit program, which was curtailed due to inadequate funding. This lack of control over application of the Act is considered a major shortcoming.

Assessment of Results

Salary Adjustments for Female Workers

The effectiveness of provincial legislation is contested by some.

A review of pay equity results in Ontario organizations has given rise to differing views. Some stakeholders emphasize "the disadvantages and the apparent ineffectiveness of the provincial style pay equity legislation"[19] or indicate that "wage adjustments have not been as large as anticipated by some groups."[20] Others, based on experience in the field, maintain to the contrary that many pay equity plans have been implemented in unionized organizations and have resulted in substantial salary adjustments.[21]

A series of surveys conducted for the Pay Equity Office from 1991 to 1994 provides an overview of the Act's application by sector and organization size. Each survey was conducted a few months after the legal posting date for the targeted organizations. Consequently, the data may underestimate the results because a number of organizations were late in commencing the pay equity process. As the authors of the report on the public sector and on organizations of 500 or more employees state, the survey resulted in a finding of a pay equity process in progress:

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[19] Federally Regulated Employers in Transportation and Communications (FETCO). (2002). Presentation to the Pay Equity Task Force, June 2002, p. 9.

[20] Canadian Bankers Association (CBA). (2002). Submission to the Pay Equity Task Force, November 2002, p. 1.

[21] See the following submissions to the Pay Equity Task Force: La Fédération des travailleurs et travailleuses du Québec (FTQ), April 2002; the National Automobile, Aerospace, Transportation and General Workers of Canada (CAW-Canada), June 2002; and the Public Service Alliance of Canada (PSAC), (April, June and November 2002).

> Yet most employers were still working on pay equity, so that at the time of writing this report, some months after the survey, it is likely that a substantial additional percentage of employers have complied with the posting requirements of the *Act.*[22]

A comparison of the results of the various surveys shows the compliance status of organizations with respect to the implementation of pay equity plans and their number.

Table 4.2: Posted pay equity plans by organization size

Organization Size	Percentage of Organizations That Posted at Least One Pay Equity Plan (PEP)		
	All PEPs %	A Few PEPs %	Total %
10-49 employees (1994)	64	10	74
50-99 employees (1992)	54	12	66
100-499 employees (1991)	51	15	66
500 or more employees (1990)			
➤ Private sector	50	26	76
➤ Public sector	46	24	86

Notes:

a. The year in parentheses is the year the survey was conducted.

b. For organizations of 10 to 99 employees, the percentage applies only to those that decided to post, i.e., 24% of the sample for organizations of 50 to 99 employees and 7% for organizations of 10 to 49 employees.

Many completed plans involved no salary adjustment.

The table above appears to suggest a high rate of compliance. However, other sources of information lead to a more nuanced interpretation. The first point to note is that, for organizations of 50 to 99 employees, those of 100 to 499 employees and those of 500 or more employees, as well as for the public sector, the data were collected before the amendments allowing for proportional value comparisons and proxy comparators came into force. Consequently, a significant number of completed plans did not make provisions for salary adjustments for one of the following reasons:

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[22] SPR Associates Incorporated/National Mail Surveys Incorporated. (1991). *An Evaluation of Pay Equity in Ontario: The First Year.* Toronto, Canada, p. 6.

- the male comparator selected using the method then in effect had a salary lower than or equal to that of the predominantly female job class; or
- no male comparator existed.

In 1990, 20% of female jobs received salary adjustments.

The impact of not having proportional value and proxy comparators was substantial, as the results of various surveys indicate. For example, in private-sector organizations of 500 or more employees, only 20.6 percent of predominantly female jobs received adjustments in 1990, whereas close to 80 percent had not received any for the following reasons:

- 51 percent had a salary equal to or higher than their male comparator; and
- 28 percent had no male comparator.

In the different categories of organization size, results are comparable, showing that a high proportion of predominantly female jobs did not receive adjustments because their salary was equal to or higher than that of the male comparator. It must be noted that this result is attributable to the legal provision requiring that a predominantly female job class without a comparator of the same value is to be compared with a class having a lesser value but a higher salary. Consequently, if such a comparator cannot be found—which is likely in many situations—there will be no adjustments for the predominantly female job classes in question. While these results are not grounds for claiming that proactive pay equity legislation is ineffective, it can be said that certain methodological choices that were originally part of the Ontario legislation have limited the scope of its impact.

Compliance in small organizations.

A distinct problem in this regard concerns organizations of 10 to 49 employees. Among these, only 7 percent chose to post their pay equity plan and in 1994, four of five organizations had not yet decided what they would do. The data are therefore unreliable and, in particular, raise a basic question, that of compliance on the part of small organizations. As the authors of a survey point out:

> Two very large pre-tests which were conducted by the Institute of Social Research clearly demonstrated that the population of interest was quite different from that of previous surveys: small business owners were often not aware of, or did not understand, the concept of pay equity as defined by the legislation.[23]

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[23] Institute for Social Research. (1994). *Pay equity survey of private sector organizations employing 10-49 employees in Ontario.* Toronto: York University, p. 30.

The Canadian Bankers Association indicates that "smaller employers have found it difficult to comply."[24] According to Nan Weiner,[25] the non-compliance problem among small organizations is significant, since they employ a very high percentage (65%) of women.

An examination of the job classes that received adjustments under the Ontario legislation reveals a substantial proportion of clerical jobs, which was foreseeable as these jobs are heavily female-dominated.

Average wage adjustments vary considerably by study and by organization size.

As some studies show, wage adjustments vary considerably, averaging 11 percent of the base pay for organizations of 50 to 99 employees and 8 percent for organizations of 10 to 49 employees. In their analysis of 27 organizations, McDonald and Thornton[26] noted that the average wage adjustment was 5 percent of female employees' base salary. Other studies came to differing conclusions about the size of average wage adjustments.

The Situation of Non-Unionized Female Workers

These averages cover a very wide range of situations, particularly with respect to non-unionized female workers. According to research commissioned by the Task Force, these workers were not able to benefit adequately from the advantages of pay equity, with the exception of the Professionals category, whose members are better equipped to understand the legislation and to benefit from it.[27] The Ontario legislation provides that, where there is no union, the employer alone handles pay equity in an organization. In theory, therefore, non-unionized female workers may not participate in pay equity implementation and cannot verify the compliance of the process except through postings, which are not always easy to understand.

Role of PEALS.

To make these workers less vulnerable, a legal aid clinic, Pay Equity Advocacy and Legal Services (PEALS), was established in Ontario. PEALS was created to help non-unionized female workers benefit from the protection of the *Pay Equity Act*, in particular by assisting women who thought their rights had been infringed by their employer. The impact of the clinic, which closed its doors in 2000 for lack of funding, was positive overall. In many cases, the rights of female workers were restored through PEALS-stakeholder mediation. In other cases, their complaints were settled by the Pay Equity Commission or the Pay Equity Hearings Tribunal.[28]

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[24] Canadian Bankers Association, *supra*, note 20, p. 1.

[25] Nan Weiner, *supra*, note 1, S101-S115.

[26] McDonald and Thornton, *supra*, note 18, p. 193.

[27] Mary Suzanne Findlay and Rosemary Warskett. (2002). *Pay Equity for Non-Unionized Workers in Federal Jurisdictions: How to Make It Work?* Unpublished research paper commissioned by the Pay Equity Task Force.

However, research commissioned by the Task Force reveals that psychological and emotional costs were high for many non-unionized female workers who pursued their rights under the legislation. They were victims of intimidation and harassment by employers because of their complaints against them.

> A disturbingly large number of the women who lodged complaints against their employers suffered significant emotional and psychological costs.
>
> Mary Suzanne Findlay and Rosemary Warskett. (2003). *Pay Equity for Non-Unionized Workers in Federal Jurisdictions: How to Make It Work?* Unpublished research paper commissioned by the Pay EquityTask Force, p. 8.

Fear of retaliation very likely dissuades many non-unionized workers from filing complaints.

It is also highly likely that fear of retaliation dissuaded a significant percentage of such workers from filing a complaint. This is all the more plausible for very precarious jobs predominantly held by female workers who are at double jeopardy, such as Aboriginal women, women who are members of a visible minority, or women with a disability. With the restructuring of the economy and the growing use of non-unionized subcontractors, this situation may become even more frequent.

Other Effects on Female Workers

Pay equity has enhanced the image of women's work.

Numerous stakeholders have noted how the entire pay equity process in Ontario, and not just the salary adjustments, have heightened the image and perception of women's work. The pay equity process was made necessary due to certain aspects of women's work which were overlooked or ignored, owing to deeply rooted prejudices and stereotypes, as discussed in Chapter 1. One of the direct consequences of implementing pay equity in organizations is bringing to light the overlooked requirements of women's work, the diversity and level of skills required or the responsibilities assumed:

> Both employers and unions have indicated that the process of job evaluation performed in identifying gender bias was useful in appreciating skills involved in work which has been traditionally

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[28] Ibid.

> female-dominated. The United Steelworkers of America indicated that the process of assessing the skills involved for cashiers in a modern grocery store increased awareness of the value of the knowledge and ability which women cashiers must possess not only among membership, but also among union executives.[29]

Pay equity has given some women workers an increased sense of worth.

In her review of the *Pay Equity Act* in Ontario, Jean Read notes that "the increased sense of worth resulted in some women taking further training in investing in personal computers to improve their skills."[30]

In fact, by highlighting certain important technical aspects of women's work, the process may prompt some women to choose non-traditional occupations. According to Femmes regroupées en options non traditionnelles (FRONT):

> [TRANSLATION] Performing clerical work requires skills such as understanding instructions, quickly identifying problems, and maintaining equipment. These skills can be transferred to many non-traditional occupations.[31]

Pay equity has not led to a loss of jobs for women.

Other potential effects unrelated to compensation have been mentioned in the literature, such as the possibility that the number of women's jobs would drop as the result of wage increases. This was not observed in Ontario, except in very rare cases in the parapublic sector, where pay equity was implemented as part of budget cuts. In general, the effect on employment was negligible.[32]

Financial Costs for Employers

Costs of pay equity to employers in Ontario ranged from 0.5 to 2.2 percent of payroll for public-sector organizations.

Proactive pay equity implementation experiences in North America have shown the cost to be generally from 4.0 to 8.0 percent of payroll, though often less.[33] The Ontario results indicate that this cost was much lower, ranging from 0.5 percent for organizations of 50 to 99 employees to 2.2 percent for public-sector organizations of 500 or more employees.

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[29] Jean M. Read. (1996). *Review of the Pay Equity Act*. Toronto: Government of Ontario, p. 29.

[30] Ibid., pp. 29-30.

[31] Femmes regroupées en options non traditionnelles (FRONT). (1996). *La formation en entreprise est-elle la voie pour l'équité?* Documents préparatoires du Colloque, Montréal, p. 6.

[32] McDonald and Thornton, *supra*, note 18, p. 199.

[33] Morley Gunderson. (1994). *Comparable Worth and Gender Discrimination: An International Perspective*. Geneva: International Labour Organization (ILO), p. 111.

Table 4.3: Salary adjustments as a percentage of payroll

Organization Size	Total Adjustments as a Percentage of Payroll
10-49 employees	1.4
50-99 employees	0.5
100-499 employees	1.1
500 or more employees:	
➤ Private sector	0.6
➤ Public sector	2.2

Source: SPR Associates, 1991;[34] Canadian Facts, 1992 and 1993;[35] Institute for Social Research, 1994.[36]

Administrative costs for the implementation of pay equity, including consultants' fees and wages for the organization's human resources management consultants, vary from $88 to $139 per employee as indicated in Table 4.4 below. Note that this is not a recurring cost, as it is associated with pay equity development and implementation.

Table 4.4: Administrative costs for pay equity by organization size, Ontario

	Average Administrative Costs	
Organization Size	Per Employee $	Per Employer $
10-49 employees	139	9,000
50-99 employees	149	9,100
100-499 employees	168	35,200
500 or more employees:		
➤ Private sector	88	121,248
➤ Public sector	173	49,380

Source: SPR Associates, 1991; Canadian Facts, 1992 and 1993; Institute for Social Research, 1994.

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[34] SPR Associates, *supra*, note 22.

[35] Canadian Facts. (1992). *Outcomes of pay equity for organizations employing 100 to 499 employees in Ontario.* Toronto: Pay Equity Office. Canadian Facts. (1993). *Outcomes of pay equity for organizations employing 50 to 99 employees in Ontario.* Toronto: Pay Equity Office.

[36] Institute for Social Research, *supra,* note 23.

Overall, average costs are clearly nowhere near as high as costs associated with complaints.

> The cost to employers of implementing pay equity under a proactive model ought to be less than that under a complaint model. Under a complaint driven model the employer may not have positive obligations to implement pay equity by a particular date, but once a complaint is filed and upheld, the employer is more likely than not going to be liable for the wage gap that dates from the filing of that complaint, or in some cases, earlier than the filing of that complaint, as well as being potentially obligated for interest and legal costs (of their own and that of the complainants).
>
> The cost to the taxpayer and to government is similarly likely to benefit from a proactive model. [...] The cost of investigating a s. 11 group complaint is *at least* $150,000.00 in 1999-2000 dollars. This cost does not include staff investigation and administration salaries or materials. This cost does include travel, development and testing of gender-bias free job information acquisition tools, confirmation by statistical expert[s] of sample methodology reliability, job information acquisition, development and testing of a reliable job and establishment appropriate gender bias free evaluation tool, gender-bias free job evaluation, independent expert evaluation of the job evaluation methodology and results, wage gap analysis review by an independent expert.
>
> Canadian Association of University Teachers (CAUT). Submission to the Pay Equity Task Force, November 2002, p. 21.

A proactive approach lessens the direct financial burden on society in general.

Although the data on the results of Ontario's proactive legislation are only partial, we may conclude with certainty that, where pay equity was implemented, total costs to organizations are clearly lower than the cost of the complaint-based process. Moreover, the financial burden borne indirectly by society in general is also lower. Finally, as the Public Service Alliance of Canada put it, it is important to frame these expenses in the context of their primary objective.

> There is no doubt that pay equity has cost consequences for employers. However, we must never lose sight of the principle that it is a cost associated with respecting human rights and dignity.
>
> Public Service Alliance of Canada (PSAC). Final Submission to the Pay Equity Task Force, November 2002, p. 6.

Other Effects on Organizations

Pay equity resulted in coherent up-to-date systems and coherent pay systems.

The non-monetary effects observed in Ontario organizations primarily concern human resources management systems, particularly the pay system. Various studies clearly found that most employers consider the effects of pay equity to be positive. It has allowed them to update systems that developed over the years, that were based on a series of objectives that lacked coherence as a whole and that were sometimes no longer relevant to the mission of the organization. Furthermore, pay equity allowed employers to make the pay system coherent and to subsequently establish internal equity using the tools developed for pay equity.

Another significant positive impact is the improvement in labour relations that many employers reported. In fact, joint employer-union participation in the pay equity process generally led to cooperative relations between the parties, relations that continued after the fact. This is in stark contrast to the complaint-based process, which creates a climate of conflict between the parties and generates a negative long-term impact.

Transparency and communication are essential to the pay equity process.

Finally, it was also noted that the perception of equity among employees improved as long as the process was transparent and communication with employees was appropriately adapted and ongoing. The existence of clearly identified recourses to deal with cases of misunderstanding or dissatisfaction with results also fostered a perception of equity.

Lessons from the Ontario Experience

A reading of studies examining the Ontario experience and of submissions to the Task Force reveals important lessons. A few of these will be addressed below.

First, it must be recognized that the Act resulted in many pay equity adjustments for female workers in Ontario. It is realistic to state that such results would not have been achieved in a similar timeframe with the conventional complaint-based model. However, one major shortcoming was identified—the absence of any effective means of assessing whether non-unionized employees are gaining the full benefits of the Act.

We understand from discussions during our consultation process that the Pay Equity Office played a significant part in quickly developing documents and guides for stakeholders, as well as by intervening to bring parties in dispute closer together and to prevent disputes from reaching the stage of legal proceedings. Many issues were referred to the Pay Equity Hearings Tribunal, which established important case law subsequently used by other stakeholders as a guide for interpreting ambiguous provisions of the Act. Although it took several years to resolve certain complex cases, the timeframes were much shorter on average than for cases dealt with under complaint-based models.

Several factors influenced the compliance of organizations with the Act.

Several factors influenced compliance.

Methodological factors partly explain why some organizations made few salary adjustments or none at all.

- ➤ A wage comparison method, which was used in the first years of the Act, considerably restricted the scope of potential comparisons. Legislation was amended in 1993 to include proportional value and proxy comparator methods.
- ➤ There were no available male comparators in many private-sector organizations and these organizations did not have access to proxy comparators.
- ➤ Sufficient detail was lacking regarding several aspects of the pay equity plan, such as the definition of "employer" or the identification of gender bias.

In general, Ontario's legislation had more impact in unionized organizations, notably as a result of union participation in pay equity implementation. Several unions had in fact already developed an expertise in gender-neutral job evaluation and this was relied on in some workplaces.

According to several analysts, a lack of control and auditing is the primary reason why a number of organizations did not comply with the Act. In fact, the Act does not require reports to be filed with the Pay Equity Office. Thus, there is no systematic way to identify which organizations have failed to comply with the Act and which are infringing certain provisions. Neither does the Act provide for a periodic audit program for a sample of organizations, which might have been an alternative to requiring the filing of reports. The very existence of such provisions would have been an effective incentive for organizations to comply with the Act.

Nitya Iyer noted the shortcomings of the Ontario legislation in her independent review of pay equity in British Columbia:

> Perhaps most contentious has been the fact that the law does not require employers to file pay equity plans, or to report on compliance, or to disclose the amount of any pay adjustments. [...]
>
> Low compliance rates in some sectors [...] have added credence to the view that pay equity legislation cannot really work without some effective, universal way to monitor what employers do under it [...].[37]

Other authors have noted that "The primary factors contributing to the aggregate impotence of the law were the lapses in compliance and the problems with implementation in small firms."[38]

Overall, the Ontario experience indicates that the proactive model is viable in both the private and public sectors but, if the Act is to be more effective, substantial changes must be made. The Act's objective was achieved for many female workers and the legislation also has had other positive effects for female workers and organizations. While it is true that there have been some failures, the causes have been identified, and this may lead to solutions, best practices and lessons to improve on the model.

Quebec's *Pay Equity Act*

Pay equity is entrenched in Quebec's *Charter of Human Rights and Freedoms*.

Unlike Ontario, Quebec has entrenched the principle of pay equity in section 19 of the Quebec *Charter of Human Rights and Freedoms* since 1975. The limited scope of Quebec's original complaint-based model is one reason why other provinces decided to adopt proactive legislation. In 1996, the effectiveness of the proactive model in other provinces prompted Quebec, in turn, to adopt its own proactive pay equity legislation. The Quebec model was based to a large extent on the Ontario model, while attempting to remedy certain weaknesses identified with the Ontario legislation. As will be seen, a review of the situation in Quebec highlights the particular features that result from the transition from one type of legislation to another and the necessity for specific provisions governing that transition.

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[37] Nitya Iyer. (2002). *Working Through the Wage Gap: Report of the Task Force on Pay Equity*, pp. 66-67. (Report commissioned by the Attorney General of British Columbia.)

[38] Michael Baker and Nicole M. Fortin. (2000). *Does Comparable Worth Work in a Decentralized Labor Market?* Scientific Series. Montreal: CIRANO, p. 25.

Quebec's pay equity legislation applies to all organizations in the public and private sectors with 10 or more employees. Its scope is therefore virtually universal. The process set out in the legislation includes two main features: the pay equity committee and the pay equity plan. As shown in Table 4.5, employer obligations with respect to a committee and a plan vary with their size.

Table 4.5: Application by organization size

Size of Organization	Pay Equity Committee	Pay Equity Plan
Organization with 100 or more employees	Mandatory	Mandatory
Organizations with 50 to 99 employees	Optional Only obligation: joint process	Mandatory
Organizations with fewer than 50 employees	Optional	Optional Only obligation: determination of salary adjustments

Thus, the framework is most rigid for organizations with 100 or more employees, whereas organizations with fewer than 50 employees have a great deal of latitude and are under no obligation to either create a pay equity committee or establish a pay equity plan. They need only determine salary adjustments.

The timeframes for application of the legislation do not, however, depend on organization size, as shown in the table below.

Table 4.6: Implementation deadlines

➤ Effective date for all employers	November 21, 1997
➤ Completion of PEP (50 or more employees) or of salary adjustment determinations (10-49 employees)	November 21, 2001
➤ Payment of the first adjustment	November 21, 2001
➤ Payment of the last adjustment	November 21, 2005 (at the latest)

When the Act was adopted, several stakeholders argued that the four-year period for developing the pay equity plan was too long and was not justified. It turned out, however, that few organizations had even begun pay equity work by November 1997. The legislation does not stipulate an annual percentage but employers that chose to spread out payments are required to make equal payments in the prescribed timeframe.

Quebec pay equity commission had limited resources.

The Commission de l'équité salariale [Quebec pay equity commission] was created in November 1996, one year before the Act came into force for employers. The rationale was to allow the Commission to provide information and create the necessary training services and tools. The Commission, however, was hampered in its activities by underfunding. In the initial years, when it was responsible for preparing and widely disseminating informational material and for supporting the implementation of the legislation throughout Quebec, the Commission had a small staff of around only 20. As a result, many employers were also late in applying the Act, which meant substantial delays in the process. Faced with this situation, the Minister of Labour created the Bureau de l'équité salariale [pay equity office], a temporary agency intended to support mainly small- and medium-sized organizations. While it existed, the Bureau produced a number of very useful implementation tools.

The Labour Court was responsible for hearing cases not settled by the Commission but when it was abolished, the Labour Commissioner assumed that responsibility.

Universality of Application

Quebec's pay equity legislation applies to all economic sectors and organizations of 10 or more employees. In several respects, Quebec's legislation took into account the lessons learned from the implementation of Ontario's legislation. Where no male comparator exists for an employer, the Quebec legislation provides for proxy comparisons, even in the private sector. Furthermore, it provides for several wage comparison methods, also for the express purpose of ensuring that predominantly female job classes are not denied salary adjustments for lack of male comparators of the same value within the organization.

All types of workers are covered, including contract or temporary.

In principle, the legislation applies, with few exceptions, to every employee on an employer's payroll, whether the employee works part time or full time, or on a contract or temporary basis. Some exceptions are made, for example, for executive managers, police officers and firefighters.

Flexibility

Again, based on the Ontario experience, a certain degree of flexibility was built into the Quebec legislation with respect to methodological criteria in order to adapt its implementation to different workplaces. This is the case, for example, with gender predominance in job classes and with wage comparison methods. Also, to reduce costs, the Act allows several employers to work together to develop certain aspects of their pay equity plans. Finally, sectoral joint committees were also provided for, subject to the Quebec pay equity commission initially approving these committees and the tools they develop.

To ensure that this flexibility is not abused, the Act stipulates several times that every element of the process must be free of gender discrimination.

Participation

Joint employer-employee participation is provided for through pay equity committees.

Joint employer-employee participation is provided for through pay equity committees, whose structure is determined under the Act. These committees must be created in all organizations with 100 or more employees, whether unionized or not. At least two thirds of committee members must be employee representatives and at least half of these must be women. The plan that each committee is responsible for developing is specifically aimed at employees who are represented on the committee. The responsibilities of the committee are very important and employees should raise any concerns they may have about the postings with the members of the committee. However, once employees have informed committee members of their comments and the committee has responded, they may no longer take their complaint to the Commission. The pay equity committee, where it exists, is therefore the sole recourse for employees who are represented on the committee, except in cases where committee members have acted in bad faith or in a negligent or discriminatory manner. Each committee member is entitled to receive training and access to relevant information.

Pay Equity Maintenance

Employers are obliged to maintain pay equity.

Quebec's legislation includes an obligation to maintain pay equity and cites examples of several situations that justify special vigilance on the part of the employer. In fact, the employer has general responsibility for maintaining pay equity, except with respect to the renewal of a collective agreement, in which case the responsibility is shared with the union. No exception is made on the basis of bargaining power. Although the provisions governing pay equity maintenance are more detailed in the Quebec legislation than in the legislation of other provinces, stakeholders in the field stress the need for a better legislative framework.

Control and Auditing

The Quebec legislation does not require employers to file reports with the Commission. However, the Commission may decide to conduct investigations on its own initiative. It must also produce reports at predetermined dates. The first report on organizations with fewer than 50 employees was produced in 2002. Moreover, the Commission has announced that a systematic sample audit program will be introduced.

Pay Relativity

The principle of universality in Quebec's pay equity legislation was significantly compromised by the exception provided under Chapter IX – Provisions Applicable to Pay Equity and Relativity Plans Already Completed or in Progress. The legislation created, in addition to the general system applicable to all organizations, a system specific to organizations that had begun or finished pay relativity or pay equity plans before the *Pay Equity Act* came into force.

Pay relativity plans and Chapter IX.

"Pay relativity plans" refers to plans implemented by the Treasury Board of Quebec in its capacity as an employer in the public and parapublic sectors. The purpose of these plans was a global review of job evaluation and remuneration with special attention given to predominantly female jobs.[39] Pay equity plans governed by Chapter IX included those that, when the legislation was passed, had been completed for at least 50 percent of predominantly female job classes, as well as those in which job evaluation had commenced.

The provisions respecting these plans are primarily found in section 119 of the *Pay Equity Act*. Compliance criteria for these plans are fairly succinct. Moreover, participation and approval by employee representatives are not mentioned. Employers wishing to take advantage of Chapter IX were required to submit a copy of their plans to the Commission within a certain timeframe. The Commission then determined whether the plans were compliant with the legislation.

Legal challenges to Chapter IX.

About 160 employers, mostly large ones, took advantage of these provisions and the Quebec pay equity commission approved the vast majority of their plans. More specifically, it gave very wide approval to the wage relativity plans of the Treasury Board.

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[39] Institut de recherche et d'information sur la rémunération (IRIR). (1989). *Les principes de l'équité salariale et les approches dans le secteur public québécois.* Montréal.

Chapter IX and the decisions rendered by the Quebec pay equity commission regarding that chapter resulted in unions filing numerous legal challenges. The appeals filed in the Superior Court notably concern the unconstitutionality of Chapter IX and the fact that the Commission made its decisions without allowing the unions to intervene as interested parties while employers were permitted to do so.

Two orders of pay equity legislation.

Another important case before the courts concerns the transition between the systems used to achieve pay equity under two different pieces of legislation: section 19 of Quebec's *Charter of Human Rights and Freedoms* and the *Pay Equity Act.* Section 19 of the Charter prohibits wage discrimination based on 13 different grounds of discrimination prohibited in Quebec. Since the *Pay Equity Act* came into force, wage discrimination in predominantly female job classes is governed by that Act. However, the *Pay Equity Act* stipulates that any complaints pending with the Commission des droits de la personne et des droits de la jeunesse (Quebec human rights commission) regarding wage discrimination based on gender continue to be governed by Quebec's Charter. On January 9, 2004, the Superior Court of Quebec ruled that Chapter IX was contrary to the *Canadian Charter of Rights and Freedoms.*[40]

One clear lesson from this experience is that proactive legislation cannot provide for two separate systems that are not subject to the same standards of compliance with the pay equity objective. While it is true that plans already completed when an act comes into force must be governed by specific provisions, these should not result in a double standard. The problems met by Quebec's legislation are mainly attributable to this legislative choice, which was criticized by many groups when the initial bill was tabled in 1995 and which continues to be roundly contested.

Assessment of Results

Levels of compliance more limited.

An August 2001 survey conducted by CROP for the Ordre des conseillers en ressources humaines et en relations industrielles agréés du Québec (CROP-ORHRI)[41] of a representative sample of 547 employers revealed that close to two thirds (65%) of Quebec organizations had commenced work on pay equity. The figure is lower for organizations with 10 to 49 employees (59%) and higher for unionized organizations (79%). However, 46 percent of organizations stated that they had accomplished less than half the necessary work, while only 17 percent had already finished. Organizations with 10 to 49 employees cited a lack of information as the main reason for not having started the work, whereas organizations of 50 to 99 employees cited a lack of time.

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[40] *Syndicat de la function publique c. Procureur général du Québec,* [2004] J.Q. no. 21. For a discussion of transition issues, see Chapter 15.

[41] Ordre des conseillers en ressources humaines et en relations industrielles agréés du Québec et CROP. (2001). *État des travaux sur l'équité salariale au Québec : Rapport final pour l'Ordre des conseillers en ressources humaines et en relations industrielles agréés du Québec.* Available at http://www.portail-hri.com/telechargement/section_actualites/2001/septembre/equite_salariale.pdf.asp. This survey was conducted three months before November 21, 2001, the deadline by which all pay equity plans were to have been completed in Quebec.

Reasons employers gave for non-compliance focused on limited understanding and resources.

In the summer of 2002, research conducted for the Quebec pay equity commission by Léger Marketing showed that 39 percent of 3,899 organizations in Quebec with 10 to 49 employees had finished the pay equity process, 8.0 percent had initiated the process, and 53 percent had not yet begun.[42] Analysis shows that those organizations which had failed to undertake pay equity work had done so primarily because they were unaware of the Act or did not understand it:[43]

- ➤ Some employers (19%) did not think the Act applied to them or did not know it existed.
- ➤ Others (44%) did not think they had a pay equity problem, for one of the following reasons:
  - employee wages were based on tasks;
  - employees received equitable wages;
  - employees all received the same wages;
  - women employees were well paid;
  - employees were paid the minimum wage.
- ➤ Some employers (19%) cited methodological issues, indicating that their organization had:
  - predominantly male job classes only;
  - predominantly female job classes only.
- ➤ A few employers (8%) cited a lack of human resources or time.[44]

It should be noted that the lack of information attributable to the limited role played by the Quebec pay equity commission until 2002 is likely an important factor in compliance results reported in this survey.

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[42] Commission de l'équité salariale. (2002). *L'Équité salariale un poids une mesure.* Rapport du ministre du Travail sur la mise en oeuvre de la *Loi sur l'équité salariale* dans les entreprises de 10 à 49 personnes salariées. Quebec, p. 15.

[43] Ibid., Table V, p. 14.

[44] Each respondent could provide two answers.

Salary Adjustments for Female Workers

Increases in wages following implementation.

Of the organizations taking part in the 2001 CROP-ORHRI survey, 111 indicated that they expected a positive impact on wages for predominantly female job classes, amounting on average to 4.9 percent. The 2002 survey conducted by Léger Marketing for the Quebec pay equity commission de l'équité salariale du Québec indicated that the estimated average percentage increase in wages was 8.1 percent. For example, the following highly feminized occupations benefited from wage adjustments, ranging from 6.4 to 25.4 percent:[45]

- secretaries: +8.4 percent;
- receptionists: +8.9 percent;
- seamstresses: +6.4 percent;
- daycare teachers: +25.4 percent.[46]

Effects on Organizations

Three out of every five organizations employing 10 to 49 employees surveyed by Léger Marketing in 2002 estimated that wage adjustments would be 1.5% or less of the total payroll.[47]

Results of the 2001 CROP-ORHRI survey show that administrative costs incurred by employers at the time of the survey[48] ranged from $2,635 for organizations with 10 to 40 employees to $12,695 for organizations of 100 or more employees. The majority of organizations with 10 to 49 employees in the Quebec pay equity commission's 2002 survey reported costs of less than $5,000.

65% of organizations found pay equity positive overall.

In terms of overall impact, 65 percent of organizations believed that implementing pay equity would have more positive than negative effects and that this was mainly due to greater effectiveness in pay practices, greater fairness in the organization, better labour relations, and an improved working environment. Finally, most respondents stated that employees viewed pay equity as positive.

The findings of other surveys[49] and those of the Quebec pay equity commission reached similar conclusions.[50] Most respondents indicate that the effects of the legislation are positive, leading to:

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[45] Commission de l'équité salariale, *supra*, note 42, Table X, p. 21.

[46] Daycare teachers benefited from a sectoral committee initiative.

[47] Commission de l'équité salariale, *supra*, note 42, p. 22.

[48] Including the cost of consultants, software and time spent on the project.

[49] Canadian Federation of Independent Business. (2002). *300 jours plus tard : les PME et l'équité salariale*. Submission presented at the hearings of the Commission de l'équité salariale, Montréal. October 2002, p. 7. See website: http://www.fcei.ca/quebec/Equite/1106.pdf.

[50] Commission de l'équité salariale, *supra*, note 42, Table XIII, p. 24.

- a better understanding of what employees do (31%);
- job descriptions for staff (29%);
- updated pay policies (27%).

Quebec findings are very compatible with findings of Ontario surveys.

It is interesting to note that these observations are highly convergent and agree with the findings of the Ontario studies. One can be justified in arguing that this rationalization of human resources management practices may become an important competitive factor in the future, favouring the organizations that implemented pay equity under proactive legislation. In an economy that is increasingly skills-based, these pay equity effects on organizations may be significant.

As of yet, there has been no study examining other effects on female workers (e.g., co-workers or employers who have an increased appreciation of the value of women's work). There is reason to believe that the effects observed in Ontario and stated earlier will also be found in Quebec, especially since joint pay equity committees are mandatory in all organizations in Quebec with 100 or more employees, even if there is no union.

Non-Unionized Female Workers

As in Ontario, the situation of non-unionized female workers in Quebec remains a concern despite the adoption of the Act. In fact, the results of various surveys show that organizations with one or more unions were found to have achieved better results. The report of the Quebec pay equity commission states that

> [TRANSLATION] In this regard, the survey of the organizations revealed that, among the organizations that had finished implementing pay equity, there was a close correlation (over 80% on average) at every step between the presence of a union and progress by the organization in completing the process. Conversely, 87 percent of the organizations that had not begun the pay equity process did not have a union. Moreover, [...] 85 percent of organizations with 10 to 49 employees had no union.[51]

Non-unionized female workers concentrated in small organizations.

Large numbers of non-unionized female workers who would require more information to better understand the content of the pay equity process can be found in small organizations that have no obligation to create either a pay equity committee or a pay equity plan.

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[51] Commission de l'équité salariale, *supra*, note 42, p. 30.

> [TRANSLATION] Without information and support, particularly from the Quebec pay equity commission, these female workers must rely solely on the good faith of the employer to inform them of the processes under way to achieve pay equity in their organization.[52]

Female workers may bring their case before the Quebec pay equity commission, but it is likely that fear and the possibility of being fired deters them despite protection provided in the legislation from employer reprisals. According to many stakeholders, for these female workers to benefit from the Act, the Quebec pay equity commission must establish audit programs for organizations to deter employers from circumventing the Act or failing to comply.

Conclusion

In our discussion of the impact of proactive legislation in Ontario, we noted that there is some evidence that the pay equity process had a positive impact on workplace relationships and the understanding of women's work. It is to be expected that these effects would also be noted in Quebec in light of the collaborative model established for formulating pay equity plans, which provides for the participation of non-unionized as well as unionized workers.

Our review of the Ontario and Quebec experiences allows us to list some important lessons learned:

Advantages:

The proactive approach provides many advantages.

- Proactive pay equity legislation has benefited some women, resulting in numerous pay equity adjustments for employees in predominantly female job classes.
- These adjustments are made within a relatively short timeframe, in contrast to the very long complaint-based process under section 11 of the *Canadian Human Rights Act* or Quebec's original process under section 19 of Quebec's *Charter of Human Rights and Freedoms.*
- These adjustments correspond to a relatively moderate percentage of the payroll, usually under 2.5%.
- Retroactivity costs are incurred only if the employer exceeds the deadlines set by the Act.
- Employers have found the impact to be positive in terms of the pay system, staffing, labour relations, the perception of equity, and the work environment.

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[52] E. Déom and J. Mercier. (2001). "L'équité salariale et les relations du travail : des logiques qui s'affrontent." *Recherches féministes.* Vol. 14, No. 1, p. 56.

- Employers consider that the positive effects outweigh the negative ones.
- For female workers, these adjustments have a positive impact on their financial independence, both in the short and long term.
- The pay equity exercise results in a better perception of women's work in the workplace and increases women's self-respect and sense of dignity.
- There is a negligible negative impact on the employment level for women who have benefited from the process.

Disadvantages:

Disadvantages of existing proactive legislation.

- In Ontario, methodological problems have resulted in a compliance rate that seems relatively low in many organizations, notably owing to the wage comparison method and the absence of male comparators.
- In Quebec, a lack of adequate support for implementation of the Act by the Quebec pay equity commission resulted in organizations delaying the pay equity process.
- In addition, this lack of support also helped maintain a certain ignorance and lack of understanding of the Act's objectives, particularly among organizations of fewer than 50 employees.
- The existence of a dual system under Quebec's legislation has resulted in numerous disputes and delays in the public and parapublic sectors.
- Non-unionized female workers appear to have been overlooked in both Acts.
- The lack of systematic audits of organizations in both provinces has encouraged a number of organizations to avoid complying with their legal obligations.
- Neither the Quebec nor the Ontario legislation properly accommodates small organizations by providing clear and specific guidance or setting out specific requirements regarding their obligations under the law.

Cheaper for employers and society in general.

Overall, proactive legislation has had a very positive impact. It is also true that these laws have had a narrower scope than expected and have led to some problems. Nevertheless, at this time, it must be said that proactive legislation has resulted in the greatest number of female workers obtaining concrete recognition of a fundamental right that had long been promised, and this without lengthy and costly litigation. Although surveys and studies have helped to identify the reasons for these problems, the next step is to draw on lessons learned and to provide solutions and best practices for overcoming them.

Chapter 5 – The Recommended Model

In earlier chapters of this report, we have shown the persistence of gender-based wage discrimination, and we have described the legislative and policy responses within Canada and elsewhere to the problem. We have also assessed the effectiveness of the current regime in place in the federal jurisdiction under section 11 of the *Canadian Human Rights Act* (CHRA).[1]

New pay equity legislation required.

As we indicated, this assessment has led us to the conclusion that the complaint-based model currently in place has not proved to be an effective means of achieving the goal of equal pay for work of equal value. We are therefore recommending that new pay equity legislation be enacted.

In this chapter, we outline the basic principles which underlie the model we are recommending to replace the current legislation. In later chapters, we will be addressing specifically a number of particular issues which arise in connection with this proposed model, and will make more detailed recommendations.

General acknowledgement that current legislation is not effective.

In our consultations with those affected by federal pay equity legislation and other interested observers, we heard general acknowledgement that the objective of equal pay for work of equal value is an important goal, and that the current system has not proved to be a satisfactory means of working towards this goal. In articulating these principles, we are building on this consensus to outline what we think will be a feasible and sustainable system for making progress in reducing that part of the wage gap which is attributable to gender discrimination.

> Equal pay for work of equal value should be a cornerstone of employment practices in our society. It is not optional. We believe that it is an obligation that every employer should respect, and a right to which every employee is entitled. We also believe that it is inappropriate to rely on complaints (or the threat of complaints) to achieve compliance. The current approach disadvantages the very people that the legislation should aim to protect—i.e. those who have less education or resources, and those who are not represented by a more influential agent.
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> Hay Group Ltd. Presentation to the Pay Equity Task Force, June 2002, p. 2.

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[1] Canada. *Canada Human Rights Act.* R.S.C. 1985 c. H-6.

> [TRANSLATION] According to Judy Fudge, Canada is a world leader when it comes to pay equity. We must congratulate ourselves on this, but, as we know, we have still not achieved our goal and the current legislation is flawed. We hope that the work of the Task Force will be inspired by past successes at both the federal and provincial levels, and will improve the tools at our disposal. This will enable Canada to continue to play its leadership role at the international level, while the federal government does the same nationally.
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> New Brunswick Pay Equity Coalition. Submission to the Pay Equity Task Force, June 2002, p. 3.

A Legislative Home for Pay Equity: Human Rights or Labour Law?

We have traced the origins of efforts to confront and address wage discrimination, and we have described the history of legislative responses to this issue in Canadian jurisdictions. The struggle to eliminate wage discrimination has been manifested in two different kinds of legislation—labour legislation and human rights legislation.

One of the most challenging aspects of our inquiries has been deciding which of these legislative rubrics is the most appropriate conceptual home for 21st century pay equity legislation. These two types of legislation are very different in terms of history, conventions, public perception and juridical focus, even though either could serve as a hospitable framework for addressing the issue of pay equity.

Labour Legislation

Two basic kinds of labour legislation regimes have been put in place in every Canadian jurisdiction to protect workers and to assure them of at least a minimum level of terms and conditions of employment.

Labour standards legislation.

The first of these regimes is labour standards legislation, which regulates the terms of employment with relation to such things as wages, hours of work and notice of termination, and which provides for the maintenance of health and safety standards in the workplace. Under this kind of legislation, a regulatory apparatus permits all workers, both unionized and non-unionized to assert their entitlement to the basic standards laid out in these statutes.

Collective bargaining legislation.

The second type of regime is collective bargaining legislation, which gives workers the right to associate and to choose to be represented by a trade union in negotiating the terms and conditions of their employment with the employer.

Collective bargaining legislation, which dates back to the 19th century, has clearly affirmed that workers are entitled, as a matter of social policy, to a basic level of economic security, predictability and fairness in their working lives. This kind of legislation, in particular, conveys the message that there must be ways for workers to insist that their interests be considered in the management and operation of the organizations which employ them.

This has provided a useful framework which has permitted trade unions and employers to discuss a varied and evolving range of workplace issues, including issues of workplace equality and human rights. In fact, in many workplaces, collective agreements gave rise to the first anti-discrimination policies for workers, without any additional legislative support.

Labour standards legislation also provides a regulatory mechanism which enables non-unionized workers to obtain assistance if they wish to challenge their employers or engage them in a discussion of workplace issues.

Government labour departments or their equivalents throughout Canada have now accumulated many decades of experience in investigation, adjudication and enforcement—often associated with implementing labour standards legislation—and in the more facilitative role of resolving conflict, providing advice and promoting constructive discussion between employers and their employees. This latter role is often associated with collective bargaining relationships, but has also been played to effect in bringing about compliance with labour standards legislation.

There would thus be a number of advantages to placing pay equity legislation within the framework of other labour legislation:

- ➤ It would make it possible to dovetail the pay equity process with other aspects of determining wages and working conditions, whether under labour standards legislation or collective bargaining legislation.
- ➤ It would enable the parties to draw on the sophisticated expertise at Human Resources Development Canada (HRDC) and elsewhere, which has evolved in relation to a wide range of workplace issues. Many of the participants in

> our consultation process have expressed their confidence in the structure now in place in the Labour Program at HRDC as a source of expert and impartial support in labour standards and industrial relations questions.

In their brief to the Pay Equity Task Force (June 2002), Federally Regulated Employers – Transportation and Communications (FETCO) made the following comments:

> It's FETCO's belief that the regulatory role for equal pay federally should be given to an agency of government whose primary role relates to workplace matters. This should be the Labour Program at Human Resource Development Canada, which is responsible for, among other things, the three Parts of the *Canada Labour Code*. [...]
>
> We believe that there are substantial arguments that can be made to support this recommendation:
>
> - HRDC already has a role in human rights related to matters in pay equity, employment equity, and sexual harassment and so are familiar in dealing with the workplace parties on such issues.
> - The Federal Mediation and Conciliation Service (Part I) and the Operations Directorate, which is responsible for Parts II and III, have the skills and resources to assist the parties in dealing with pay equity issues.
> - HRDC has a history of handling disputes in a problem solving way which is what is needed—and is clearly lacking now—in equal pay enforcement.
> - HRDC has an enviable history of working jointly with the workplace stakeholders when it comes to statutory and regulatory development and in enforcement.
> - HRDC also has the experience of dealing with the public service through Part II of the *Code* which covers the federal government.
> - The history of equal pay federally has shown that it is intrinsically linked to collective bargaining and much is to be gained in giving the same agency responsibility for enforcement of both.
>
> Federally Regulated Employers – Transportation and Communication (FETCO). Submission to the Pay Equity Task Force, June 2002, pp. 9-10.

The Canadian Bankers Association took essentially the same position in their brief to the Task Force, contemplating that the basic principle of equal pay might be stated in human rights legislation, with the regulatory requirements administered by HRDC.

For many employers, the process of determining pay equity issues is very closely linked with their collective bargaining relationships. Where pay equity has become an issue, whether because of a complaint or because a bargaining partner has raised it, collective bargaining will be affected by the efforts to close the wage gap. Similarly, the pay equity analysis which is undertaken will be influenced by the nature of the collective bargaining relationship and by the context created by other bargaining priorities.

Treating pay equity legislation as labour legislation constitutes an acknowledgment of the significant role of trade unions in relation to the pay equity issue. As we have seen, unions have played an important role historically in identifying sources of workplace discrimination and in pushing for rectification of discriminatory practices. In our discussions with them, workers' organizations argued that they should continue to have a significant voice in the resolution of wage discrimination against their members. Though the majoritarian nature of decision making by trade unions has led to criticism of their ability to effectively represent the interests of minorities within their bargaining units, many unions have accepted the challenge of examining their own policies and practices with a view to removing possible sources of discrimination.

> No union, today, would back bargaining demands intended to reintroduce men's wage premium. The majority of unions, including many of those most identified with male privilege in the past, have publicly committed themselves to gender equality programs, and many have been involved in pay equity negotiations.
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> Anne Forrest. (2003). *After the Pay Equity Award: Can Collective Bargaining Maintain Equal Pay for Work of Equal Value?* Unpublished research paper commissioned by the Pay Equity Task Force, p. 38.

It is more than half a century since the basic elements of Canadian labour legislation were put in place. The federal government enacted a statute protecting and promoting collective bargaining in 1944, and this example led to the

Labour legislation has been in place for more than half a century.

Labour relations boards have established a strong reputation for fair decision making.

passage of similar legislation in other jurisdictions shortly after that. The oversight agencies connected with the administration of labour legislation, particularly labour relations boards and arbitrators, have established a strong reputation for fair, responsible and imaginative decision-making. The courts have shown a high degree of deference to the oversight agencies' decisions because of their experience and expertise, and this has permitted the development of a body of jurisprudence which is quite coherent and which reflects the particular dynamics of the relationships between employers and their employees.

Human Rights Legislation

Fundamental rights have been a prominent feature of public debate in Canada.

Since the first piece of human rights legislation was enacted in a Canadian jurisdiction in 1947,[2] governments have tried to articulate essential rights which all citizens should enjoy, and which should be respected in their dealing with governments and with private actors whose decisions affect their interests. The definition of these fundamental rights has been a prominent feature of public debate in Canada in the past several decades, and the discourse of equality and civil rights has become familiar to all Canadians. In her report, Margot Young states that:

> Such legislation has been found to be law of fundamental importance, incorporating certain basic goals of our society. Thus, human rights legislation's quasi-constitutional nature flows from the way in which it can be understood as a "blueprint" for a desirable society.[3]

Supreme Court of Canada: human rights legislation has a "quasi-constitutional" status.

Even prior to the advent of the *Canadian Charter of Rights and Freedoms* (the Charter), it was argued that human rights legislation should have some kind of privileged status, and should constitute a standard against which other legislation and the conduct of social actors should be measured. With the enactment of the Charter, this idea became much more focused. Among other things, it was necessary to define specifically the status of human rights legislation in contradistinction to the constitutional position of the Charter. The idea that human rights legislation, though not strictly speaking constitutional, has a "quasi-constitutional" status has been supported in a number of cases by the Supreme Court of Canada. In *Insurance Corporation of British Columbia* v. *Heerspink*,[4] one of the majority judgments remarked that a provincial human rights code "is not to be treated as another ordinary law of general application. It should be recognized for what it is, a fundamental law." This idea was expanded in the decision in *Winnipeg School Division No. 1* v. *Craton*[5] in the following comment of McIntyre, J.:

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[2] Saskatchewan. *Saskatchewan Bill of Rights Act*, S.S. 1947.

[3] Margot Young. (2002). *Pay Equity: A Fundamental Human Right*. Status of Women Canada, p. 5.

[4] *Insurance Corporation of British Columbia* v. *Heerspink*. [1982] 2 S.C.R. 145.

> Human rights legislation is of a special nature and declares public policy regarding matters of general concern. It is not constitutional in nature in the sense that it may not be altered, amended or repealed by the Legislature. It is, however, of such nature that it may not be altered, amended or repealed, nor may exceptions be created to its provisions, save by clear legislative pronouncement.

Supreme Court of Canada: *Canadian Human Rights Act* is remedial. Remedies must be effective.

With respect to the *Canadian Human Rights Act* itself, the Supreme Court has commented:

> [The *Canadian Human Rights Act*] is not aimed at determining fault or punishing conduct. It is remedial. Its aim is to identify and eliminate discrimination. If this is to be done, then the remedies must be effective, consistent with the "almost constitutional" nature of the rights protected.[6]

Focus is now on systemic discrimination.

As the passage above indicates, accompanying this evolving description of the significance—indeed primacy—of human rights legislation is an increasing emphasis on the systemic nature of discrimination and on the remedial aspects of legislation. Human rights legislation does contemplate the possibility of imposing sanctions on unacceptable conduct, and compensating individuals for specific harm. There is no doubt, however, that the focus is now on systemic discrimination and on social and institutional mechanisms for the elimination of discriminatory practices.

Placing pay equity legislation under the legislative rubric of human rights enactments would be appropriate for a number of reasons:

Pay equity is a fundamental right.

- The characterization of pay equity legislation as human rights legislation makes it clear that, in its essence, an entitlement to equal pay for work of equal value is a fundamental right, and that wage anomalies which are attributable to gender are instances of systemic discrimination. The problem of wage discrimination is, in this context, not in the same category as other concerns about wages and working conditions which are addressed through regulatory labour legislation or through the institution of collective bargaining.

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[5] *Winnipeg School Division, No. 1* v. *Craton*. [1985] 2 S.C.R. 150.

[6] *Robichaud* v. *Canada (Treasury Board)*. [1987] 2 S.C.R. 84, at 90.

Human rights legislation has "quasi-constitutional" status.

- The "quasi-constitutional" status which has been accorded to human rights legislation would further underline the fundamental character of women's right to equality in the workplace. The language of the courts, which has gradually percolated into public consciousness, has portrayed human rights legislation as the attempts of a society to define its basic values—values which are essential to assure citizens that their dignity as persons will be respected. Without a clear conception of these values, a society cannot have confidence that all its members will be able to reach their full potential.
- As quasi-constitutional enactments, the provisions of human rights legislation are entitled to the most generous and purposive interpretations of their meaning. In disposing of issues to which the legislation is relevant, actors must be alert to the possibility that their decisions or their practices will be in conflict with the fundamental values enunciated there, and must therefore become skilled at identifying and preventing discrimination.

Human rights cannot be waived or compromised.

- If we characterize human rights legislation as a statement of a society's fundamental values, it follows that these rights cannot be waived or compromised through other kinds of social or economic transactions.

In the absence of legislation aimed specifically at the issue of pay equity, as we have seen, trade unions have had some success persuading their employers to carry out pay equity analysis and wage adjustment. In this context, however, pay equity becomes a bargaining issue like any other, and the interests of those who stand to gain from these provisions can be traded off against the interests of those who are more vocal or who have more influence on the course of negotiations. In this environment, both the parties to the negotiations and those charged with facilitating these relationships and minimizing industrial conflict place the emphasis on reaching "the deal" through a process of trading off gains and losses.

Putting pay equity under human rights legislation makes it clear that it cannot be bargained.

It should not be forgotten that one of the reasons for the emergence of human rights legislation was the vulnerability of the groups whose rights are protected. Putting pay equity on the bargaining table along with many other bargaining priorities means exposing the rights of groups defined as vulnerable in a process where there may be significant pressure to compromise or withdraw, or to yield to the forcefulness of other participants in the bargaining. It is possible, of course, to formulate labour legislation in a manner which would protect the integrity of claims for pay equity. However, assigning pay equity to that legislative category in which fundamental human rights have been addressed would make clear that this issue should not be subject to the same kinds of pressures which attend other bargaining issues.

> Leaving pay equity matters exclusively within the purview of collective bargaining could undermine equality rights rather than enabling collective bargaining and equality principles to work in concert and mutually reinforce each other. In particular, if pay equity matters form part of the regular course of collective bargaining, they would be vulnerable to trade-offs just like any other issues that are on the bargaining table.
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> Mary Cornish, Elizabeth Shilton and Fay Faraday. (2002). *Canada's International and Domestic Human Rights Obligations to Ensure Pay Equity: Obligations to Design an Effective, Enforceable and Proactive Federal Pay Equity Law.* Unpublished research paper commissioned by the Pay Equity Task Force, pp. 46-47.

Despite the fact that the courts have regarded human rights legislation as having quasi-constitutional status, the courts have not, in some respects, accorded human rights tribunals the same kind of deference which they have shown to labour tribunals.[7] This has in part arisen out of the reservations expressed by the courts about the expertise of human rights agencies in comparison to that of judges where fundamental rights are concerned.

Highly specialized expertise required for oversight of pay equity.

In other parts of this report, we have expressed our view that the effective analysis and oversight of pay equity issues requires a highly specialized expertise. It is likely, therefore, that any pay equity oversight agency could claim to have expertise of a different kind than that available in the courts, and that it would therefore be entitled to judicial deference.

Pay Equity: A Fundamental Right

Though there are arguments in favour of placing pay equity legislation in the category of either labour legislation or human rights legislation, we have concluded that it should be characterized as human rights legislation.

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[7] See, for example, *Cooper* v. *Canada (Human Rights Commission).* [1996] 3 S.C.R. 854.

Central focus of pay equity legislation is elimination of discrimination.

At the heart of the principle of equal pay for equal value is a concern with systemic discrimination, and with pay practices which have routinely overlooked or devalued important aspects of the work done by women. We think that the elimination of discrimination should be the central focus of pay equity legislation, and consequently that it should be characterized as human rights legislation.

Despite the many successes which labour legislation has had in protecting workers' interests, that legislative regime has features which make it less than perfectly suited to the issue of pay equity.

Though there are, and ought to be, strong links between collective bargaining and any pay equity process, we think compelling reasons exist for a legislative solution which does not align the process for attaining pay equity exactly with collective bargaining relationships.

In Chapter 16, we will be arguing that the current configuration of bargaining relationships has, for various reasons, replicated occupational segregation and an imbalance of bargaining power, and has thus reinforced the conditions in which wage discrimination arose in the first place. This is true even if one looks only at the situation of unionized workers; it is even truer if one takes into account the situation of non-unionized workers.

Legislation must make it clear that pay equity is a fundamental right.

It is necessary, in our view, that the legislation make it clear that pay equity is a fundamental right which is owed to all female workers, whether they are represented by a union or not, and that the legislation apply consistently in all parts of the workplace. Women workers have certainly benefited, as all workers have, from the protection available through labour legislation. The problem of wage discrimination arises, however, because they are women, not because they are workers. We believe that characterizing a pay equity statute as human rights legislation reflects this fact.

A Stand-Alone Pay Equity Statute

In its current form, pay equity legislation in the federal jurisdiction consists of a series of provisions in a general human rights statute, the *Canadian Human Rights Act*. We have considered the option that the changes we believe to be necessary could be made through the process of amendment to that Act. We have also considered the alternative of a specialized pay equity statute, of the kind which is in place, for example, in Ontario or Quebec.

We have expressed the view that the right to pay equity is a fundamental right, like other rights which are articulated in the *Canadian Human Rights Act*. The problem of eliminating wage discrimination, however, has its own distinct character. In other parts of this report, we will be discussing in detail the many technical and procedural questions which arise in connection with strategies for reducing the wage gap. These technical and procedural aspects of the pay equity question separate it conceptually from other issues addressed in the context of broadly framed human rights legislation.

Separate pay equity statute would be more effective.

We have concluded that the most effective way of addressing the problem of wage discrimination is through a separate pay equity statute that can provide the specialized technical framework required. An analogy has been drawn with the process of reflection which led to the passage of a federal statute to address the peculiar requirements of employment equity:

> Specialized pay equity legislation is best able to define the right to pay equity in sufficiently detailed and concrete terms as will enable the workplace parties to act on their obligations and to pre-empt litigation on procedural or definitional matters. As has been done with the *Employment Equity Act, 1995*, specialized pay equity legislation can best be tailored to respond precisely to the unique patterns of systemic discrimination which give rise to sex-based discrimination. It can best be tailored to provide appropriate remedies for achieving substantive equality in this precise aspect of the employment relationship.
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> Mary Cornish, Elizabeth Shilton and Fay Faraday. (2002). *Canada's International and Domestic Human Rights Obligations to Ensure Pay Equity: Obligations to Design an Effective, Enforceable and Proactive Federal* Pay Equity Law. Unpublished research paper commissioned by the Pay Equity Task Force, p. 51.

We do not think that the removal of pay equity provisions from the *Canadian Human Rights Act* and the creation of a separate pay equity statute would derogate from a pay equity act's status as human rights legislation. One writer recently commented:

> My argument is that this concern about judicial interpretation alone ought not to determine whether pay equity provisions are retained within the *Canadian Human Rights Act*. […] First, pay

> equity measures share enough of the hallmarks of legislation granted a large and liberal interpretation that a sound case can be made for continued application of such interpretive principles to them. Second, critical commentary on judicial interpretation indicates an organic interpretation is applied increasingly by the judiciary even in cases where the formal markers supporting such an interpretation are not present.[8]

An example of this kind of judicial approach is found in the following comments of Evans, J. in *Canada (Attorney General)* v. *Public Service Alliance of Canada (T.D.)*,[9] which indicate that he drew no important distinction between the essential character of the *Canadian Human Rights Act* and that of the separate pieces of pay equity legislation in place in other jurisdictions:

> Parliament was aware that section 11 represented more a statement of principle than a complete prescription. It is consistent with Parliament's intention that the "living tree" of the Act should be nourished by the experience of other jurisdictions in dealing with the social injustice at which section 11 is aimed: systemic wage discrimination for work of equal value resulting from the historical segregation of the labour world by gender, and the undervaluation of women's work.

Similarly, the Government of Canada addressed the issue of employment equity by enacting a new and separate statute, rather than amending the *Canadian Human Rights Act*, whose purpose it is to eliminate discrimination. The fact that these employment equity provisions are not part of the CHRA in no way weakens their effectiveness. The work done by the Canadian Human Rights Commission and the Canadian Human Rights Tribunal to explore the general nature of discrimination and to comment on its implications would continue to inform interpretations of any separate pay equity statute; at the same time, the examination of discrimination in a specific context under this separate statute would no doubt contribute something to the concept of discrimination evolving in human rights tribunals.

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[8] Margot Young, *supra*, note 3.

[9] *Canada (Attorney General)* v. *Public Service Alliance of Canada* [2000] 1 F.C. 146 *(T.D.)*.

A Positive Obligation

In our discussions with section 11 stakeholders, they all acknowledged that the legislation creates an obligation to refrain from discrimination on the basis of gender. They further acknowledged that this obligation is positive; that is, it requires employers to take the initiative to examine their own practices and to eliminate those compensation practices which are discriminatory.

Stakeholder recognition of this obligation is consistent with the direction recently taken by the Supreme Court of Canada in describing employer responsibility for maintaining a workplace that protects the human rights of the employees. In *British Columbia (Public Service Employee Relations Commission)* v. *British Columbia Government and Service Employees' Union* (the Meiorin case),[10] the Supreme Court of Canada made it clear that the responsibility of an employer goes beyond reacting to a particular issue of discrimination when it arises, and even beyond the notion of "accommodation" as it has been understood to this point:

> Employers designing workplace standards owe an obligation to be aware of both the differences between individuals, and differences that characterize groups of individuals. They must build conceptions of equality into workplace standards. By enacting human rights statutes and providing that they are applicable to the workplace, the legislatures have determined that the standards governing the performance of work should be designed to reflect all members of society, in so far as this is reasonably possible. [...] To the extent that a standard unnecessarily fails to reflect the differences among individuals, it runs afoul of the prohibitions contained in the various human rights statutes and must be replaced.

The pay equity legislation which has been based on this premise of positive obligation is commonly referred to as "proactive legislation." Though some employers have argued that the word "proactive" should not be used in the context of this review because of its association with the particular legislative initiatives taken in Ontario and Quebec, the term is so common in the academic literature and in the discourse of those with an interest in pay equity legislation that we think it is the best way to encapsulate the kind of legislation we will be proposing.

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[10] *British Columbia (Public Service Employee Relations Commission)* v. *British Columbia Government and Service Employees' Union* (the Meiorin case). [1999] 3 S.C.R. 3, File no. 26274 at 68.

We have described the features of proactive legislation in Chapter 4 and it is not necessary to do more here than summarize the aspects of such legislation which seem to us to justify the recommendation which follows.

- Proactive legislation clarifies the responsibilities of employers and other stakeholders, and sets out standards for them to meet.
- Rather than requiring vulnerable employees to establish the existence of discrimination, proactive legislation places the onus on the employer, who has the means to alter compensation practices, and to demonstrate that the possibility of discrimination has been examined and discriminatory practices removed.

> A proactive model ensures that everyone in the workplace is covered. No employee is forced to complain to get what they are entitled to.
>
> Canadian Union of Public Employees (CUPE) - British Columbia. Submission to the Pay Equity Task Force, May 2002, p. 5.

A proactive model:

- Provides opportunities for consistent and universal implementation and monitoring of the statutory standards for pay equity.
- Signifies that vigorous action to combat discrimination is being taken by government and by the parties to employment relationships.
- Provides greater assurance that employees will be involved in the process of achieving pay equity. The struggle to eliminate systemic discrimination is more a process of changing attitudes and habits than of imposing sanctions on individual conduct, and broad-based participation in a clear process assists with this transformative objective. Engaging with issues of discrimination has had a clear effect on the attitudes not only of employers, but of employees and their representatives.[11]

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[11] This view was expressed, for example, in the presentation made to the Pay Equity Task Force by the United Steelworkers of America in June 2002.

> The proactive model [...] can actively and positively promote climate change through education, publications and tools [...]. The phased-in introduction of proactive models is useful in providing a transition period for employers and unions to become versed in pay equity issues.
>
> Judith Davidson-Palmer. (2002). *Assessing Pay Equity Implementation, Monitoring and Enforcement Models.* Unpublished research paper commissioned by the Pay Equity Task Force, p. 23.

Proactive approach results in higher level of compliance.

Though the information we have gathered concerning the experience in Ontario, which has had the longest experience with proactive pay equity legislation in Canada, does not indicate that this regime has been completely successful in bringing about compliance, it does appear that the level of compliance is higher under this kind of system than it is under complaint-based regimes or those which rely exclusively on an audit system. The caveat attached to this is that there must be adequate support from the regulatory agency:

> It appears that the detailed requirements and follow-up and support of the responsible agency are important aspects of a model in promoting compliance. It also suggests that compliance may come more readily at the outset with a proactive model, which has implications for resources, both human and financial.
>
> Judith Davidson-Palmer. (2002). *Assessing Pay Equity Implementation, Monitoring and Enforcement Models.* Unpublished research paper commissioned by the Pay Equity Task Force, p. 16.

Proactive approach better suited to promote systemic change.

It is our view that proactive legislation is most suited to supporting and ensuring systemic change in existing discriminatory practices. Though it has been suggested to us by some employers that this kind of legislation is based on an offensive assumption that all employers are guilty of discrimination and need to be regulated, this does not seem to us to accurately characterize the proactive model. Rather, the premise is that there is evidence of wage discrimination in Canadian workplaces and that effective strategies must be consistently applied to eliminate this discrimination. It is always open to employers who have taken the initiative to close the wage gap in their own workplaces in a conscientious way to demonstrate that their practices meet the standards laid out in the legislation.

5.1 The Task Force recommends that Parliament enact new stand-alone, proactive pay equity legislation in order that Canada can more effectively meet its international obligations and domestic commitments, and that such legislation be characterized as human rights legislation.

Comprehensive Legislation

In Chapter 6, we will be looking at particular issues related to the possible scope of new pay equity legislation. It is sufficient to say here that we think it follows from our conclusion that pay equity is a fundamental right and that the legislation should be framed in a way which makes this right a reality for the largest number of people.

Existing pay equity legislation has, for a variety of practical and political reasons, been restricted in scope. In some jurisdictions, the coverage of legislation specifically addressing pay equity has been limited to the public sector, or even just the Public Service. In some cases, the definition of employment relationships which are covered under the legislation has been drawn narrowly enough to exclude many of the kinds of contractual arrangements or contingent employment arrangements, and many of the compensation practices, that have been increasing in importance in the Canadian workforce. There are also limitations on the size of businesses which fall under legislation, based on practical difficulties associated with conducting rigorous job evaluation in small workforces.

> Smaller employers with fewer employees should be allowed to develop appropriate evaluation systems to meet their requirements, provided that those systems be free of gender bias. There is no reason to exclude smaller employers, particularly given the high proportion of women employed in this sector. Pay equity requirements should be expected of all employers, including new employers which come into existence after the act is in force. Pay equity requirements should also continue following the sale or transfer of a business or part of a business.
>
> Canadian Labour Congress (CLC). Final submission to the Pay Equity Task Force, November 2002, pp. 5-6.

It is our view that all employees are entitled to raise the question of whether their wages are being set in a manner which discriminates against them. This is a fundamental right. There are many reasons for changing how work is assigned and organized. That said, the forces which necessitate utilizing different kinds of employment structures and contractual forms to have work done cannot justify discriminating on the basis of gender against those who do the work.

Considerable experimentation with and study of methodological approaches related to the analysis of pay systems.

Over the years, different kinds of strategies for reaching pay equity have been tried. There has been considerable experimentation with and study of methodological approaches that permit the analysis of pay systems in the public and private sectors, large and small enterprises, and a spectrum of employment relationships. Though the results of these decades of experience and study indicate that there are certainly challenges in devising ways to examine the wages of employees in non-standard employment relationships, in small enterprises, or in workplaces where the management of work has been reconfigured, they also indicate that imaginative ways can be found of assessing the nature and value of the work which is being done.

We are confident that this body of research and knowledge provides the basis for extending the reach of pay equity legislation in a way which will protect as many Canadian women as possible. We think this is especially important, given that low wages for women are often associated with small enterprises and with contingent employment arrangements.

5.2 **The Task Force recommends that the new federal pay equity legislation be framed in a comprehensive way which will cover as many employees and as many types of employment relationships as possible.**

Clear Standards

Current legislation criticized for lack of clarity.

One of the most vehement complaints voiced by participants in the present system was that the current legislation fails to provide sufficiently clear standards. This is not surprising, given the amount of resources which many of the parties we consulted had devoted to litigation under section 11, and to formulating and defending alternative methodologies and procedures. Even in circumstances such as those involving major employers like Bell Canada and the Treasury Board, where the parties had initially attempted to devise a pay equity process by voluntary agreement, the uncertainty about what criteria were required or acceptable led the parties to abandon these efforts and proceed through protracted litigation instead. These problems have been exacerbated by the unsettled question of the authority of the *Equal Wages Guidelines, 1986*, but even when this legal question is taken into account, the statute and the Guidelines do not provide adequately clear standards for the parties to meet.

In this connection, careful thought needs to be given to allocating statutory principles, criteria and requirements between the statute itself and any regulations which might accompany the legislation. In addition, provision should be made for the formulation of policies, procedural rules and guidelines by the oversight agencies, and their power to do this should be clearly described.

> The parties to pay equity negotiations would benefit from pay equity guidelines which provide criteria and methodologies to determine when and how pay equity may be achieved.
>
> Professional Institute of the Public Service of Canada (PIPSC). Submission to the Pay Equity Task Force, October 2002, p. 1.

5.3 **The Task Force recommends that the new federal pay equity legislation contain clear standards and criteria for the achievement of pay equity.**

Methodological Flexibility and Gender Inclusivity

In setting out the background to our inquiry in earlier chapters, we have described the diverse range of workplaces falling under federal jurisdiction—public and private sector, large and small, predominantly male and predominantly female. Though we have said that the standards laid out in the legislation must be clear, this does not mean that the statute should permit only one way of meeting the standards. To reflect the differences with respect to types of employers and kinds of work which form the basis of pay equity analysis, it is necessary to contemplate a range of possible ways of meeting the standards, provided that any option which is chosen can satisfy the overarching criterion of gender inclusivity.[12] Though the achievement of pay equity has largely been approached through systems of formal job evaluation—and we will be discussing these methodologies at a later stage—the legislation should make it possible to explore different ways for employers to meet their obligations.

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[12] Our reasons for preferring this term to the more common "gender neutrality" are outlined in Chapter 11 on evaluation.

One labour organization made the following suggestion:

> The legislation should use language such as "gender neutral methods or comparison systems", rather than "job evaluation". There are many valid critiques of job evaluation in terms of gender bias. Smaller employers may not require job evaluation, but may be able to use more direct methods, for example, whole job comparisons.
>
> New Westminster and District Labour Council. Presentation to the Pay Equity Task Force, April 2002, p. 3.

> Language in the law, such as "gender-neutral methods" or "comparison systems" allows some flexibility in how the evaluations of jobs are done, depending on the size of the workplace.
>
> Canadian Union of Public Employees (CUPE). Brief to the Pay Equity Task Force, November 2002, p. 5.

Need a regime which promotes and cultivates best practices.

These views underline the idea that gender neutrality, or inclusivity, is the general yardstick for determining the acceptability of a method of assessing jobs and attaching value to them. There may be a number of ways of meeting this criterion, and some of them may be better suited to particular working environments than others. In light of our view of the importance of employee participation in the resolution of issues of wage discrimination, it is important that the means chosen for achieving pay equity should not only comply with external standards, but be workable and effective from the point of view of the parties. A regime which promotes and cultivates best practices in a variety of settings will, in our view, be more durable than one which is based on a monolithic view of how pay equity should be achieved.

> Guidelines and best practices could be developed to assist employers with implementation and maintenance of gender free compensation systems. Information that is made available could provide an overview of the objectives and the scope of pay equity. It could make very clear that in implementing pay equity one size does not fit all. In describing the different ways in which pay equity may be implemented, achieved and maintained and outlining various proactive steps such as developing plans, conducting job evaluation, and comparing male and female job-classes, it should encourage employers to find the solution most appropriate in their circumstances. In providing best practices, it could assist employers in making decisions about what methodologies work or don't work in specific types of organizations or under differing conditions.
>
> Canadian Bankers Association (CBA). Submission to the Pay Equity Task Force, November 2002, pp. 5-6.

Throughout this report, we identify a number of standards and criteria which are important components of an effective regime for achieving pay equity. The standard which must be seen as overarching all others in this respect is that of gender neutrality, or inclusivity.

Must examine possible sources of gender bias in the systems and practices which affect women.

In shaping the human rights regime to take the systemic origins of discrimination into account, courts, legislators and commentators have stressed the need to examine possible sources of gender bias in the systems and practices which affect the lives of Canadian women. In attempting to understand and apply human rights norms in various contexts, decision-makers have enunciated interpretive principles and developed analytical tools which permit the identification of gender bias and provide assistance in formulating new approaches to problems of discrimination.

Cannot assume that systems are gender neutral.

The experience of participants and decision-makers with efforts to achieve pay equity has shown the importance of sensitivity to the possibility of gender bias at all stages of the process. No system, instrument or relationship can be assumed to be inherently gender-neutral. As we will observe many times in this report, it is important that pay equity legislation draw attention to the issue of gender inclusivity. Though the onus to ensure that the process is gender inclusive rests on the employer, it is important that all participants be sensitized and provided with the skills to address gender bias as they go through successive phases of the pay equity process.

5.4 **The Task Force recommends that the new federal pay equity legislation provide for flexibility in the application of the standards, and that it require that all standards, tools, methods and processes used in the achievement of pay equity be free of gender bias.**

Employee Participation

Employee participation is crucial.

A further important principle of the legislative regime we are proposing is the importance of employee participation. In Chapter 8, we will be discussing this principle in detail, and suggesting models for involving employees in pay equity analysis and the implementation of pay equity plans.

> [TRANSLATION] It is essential to explicitly recognize the role played by women workers and trade unions throughout the process leading to pay equity. The parties covered by a pay equity regime must agree on the various stages, the tools, the analyses, and the results, and ensure that the whole process is free of gender bias.
>
> Fédération des travailleurs et travailleuses du Québec (FTQ). Presentation to the Pay Equity Task Force, April 2003, p. 9.

There are several important reasons justifying employee participation.

- Employees are a source of important information about the work they do, and can provide a perspective on the relative value of jobs which can be useful in the process of evaluating jobs and assessing their value. Though formal position descriptions and work assignments are significant indicators of the content of particular jobs, the people who do the jobs are likely to be able to shed light on the tasks which are performed in practice.
- Involving employees in the planning and implementation of a pay equity strategy increases the credibility of the process and the comfort level of employees with the results. A case study of the pay equity process at the International Nickel

Company (INCO)[13] draws an interesting contrast between an initial pay equity analysis conducted without employee consultation, and a subsequent process which involved a joint committee. Many non-unionized women employees reacted to the initial plan with suspicion and a lack of confidence in the results, and their concerns led to a pay equity complaint under the Ontario legislation. In retrospect, management representatives acknowledged that proceeding without employee consultation had been a mistake, and could have been expected to engender employee anxiety.

> Above all, the process of implementing pay equity must be transparent and open to the scrutiny of employees, unions and organizations representing women. This is more likely if an employee committee whose members are elected by employees or their bargaining agents has a central role, and if at least half the committee members are women, as under the Québec legislation.
>
> Carol Agocs. (2003). *Involvement of Workplace Partners in Pay Equity Implementation and Maintenance.* Unpublished research paper commissioned by the Pay Equity Task Force, pp. 39-40.

- A third important benefit of employee participation is the opportunity it provides to develop within the organization a wider base of trained and informed people, who can help to explain the pay equity plan to those who will be affected by it, and who have the capacity to ensure that the plan is monitored and renewed if necessary.

The potential of employee involvement for organizational capacity building is a significant factor in ensuring that the effect the participants have had in formulating and implementing a pay equity plan will not become attenuated over time because of the absence of people familiar with the issues and with the objectives of the plan.

The attainment of jointly pursued objectives through collaboration in achieving pay equity also provides a basis for a common front in explaining the system to employees and resolving any lingering issues.

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[13] Gordon DiGiacomo and Paul Carr. (2003). *International Nickel Company Limited: A Case Study in Pay Equity Implementation.* Unpublished research paper commissioned by the Pay Equity Task Force.

Both the union and the employer agreed that this was a successful process, with the added benefit of a solid relationship between the parties, who then sat together to answer any questions of employees who were not satisfied with the results.

Communications, Energy and Paperworkers Union of Canada (CEP). Supplementary submission to the Pay Equity Task Force, describing a pay equity exercise at the *Toronto Star*, November 2002, p. 12.

Employers, employees and their bargaining agents must be involved in each step of the pay equity process. This means that the pay equity process must be clear and transparent.

Status of Women Canada. Recommendations to the Pay Equity Task Force, November 2002, p. 5.

5.5 **The Task Force recommends that the new federal pay equity legislation provide for the involvement of both unionized and non-unionized employees in the process of achieving and monitoring pay equity.**

Adequate Institutional Support and Training

The conceptual framework for the achievement of pay equity is composed of elements drawn from a number of different areas—human rights, personnel and compensation practices and labour relations. We are confident that it does not lie beyond the capabilities of employers, employees and employee representatives to gain an understanding of this framework which will enable them to formulate and put in place pay equity plans which will both meet rigorous legislative standards and serve the needs of their particular workplaces.

In order to do this, however, the participants must have adequate assistance and preparation, and their efforts must take place in the context of a robust and well-resourced oversight system. In Chapter 17, we will be describing in detail the features which we think should be included in this system. Included among the services which we think must be provided to support the system are public information and education, training, assistance in dispute resolution, assistance in pay equity analysis, provision of templates and model plans, investigation, advocacy services and adjudication.

All parties require assistance to implement and maintain pay equity.

> For the law to be effective, we would argue that dedicated resources on this question are needed—resources which are not in competition for dollars with other important human rights issues and measures.
>
> Canadian Labour Congress (CLC). Final submission to the Pay Equity Task Force, November 2002, p. 10.

There has been some investment of resources in education and assistance under the current system of administration of section 11. A large proportion of the resources which have been deployed, however, including the resources of employers and trade unions, have been connected with litigation before the Canadian Human Rights Tribunal and before the courts. Though, as we emphasize elsewhere in this report, adjudication and enforcement capacity is a necessary feature of any legislation of this kind, the focus should be on using resources in a way which will help to make sensitivity to wage discrimination and commitment to removing barriers to equality part of the culture of the workplace. In this way, one can hope that the participants will, to a greater extent, develop the capacity to take their own proactive steps to make improvements.

Training is a priority.

In this context, priority must be given to training for participants—for employees, employers, unions and advocacy groups, and for the wider public—to increase their capacity to understand and address the somewhat complicated issues associated with pay equity.

It is likely that these needs will be heavier in the early stages of the implementation of the legislation, as the parties are assisted with the formulation and implementation of pay equity plans, and it is necessary to be especially careful to devote sufficient resources to this phase. On the other hand, the experience of the parties and the oversight agencies under the Ontario legislation suggests that it is not desirable to make the assumption that resources can be withdrawn too dramatically once this phase is supposed to have been completed. The parties will continue to need adequate assistance with the monitoring and amendment of their plans. Turnover among management and employees makes it necessary to continue to provide training. Neither does the experience of the Canadian Human Rights Commission and other human rights agencies indicate that the project of sensitizing and educating the public about human rights issues can ever be assumed to be unnecessary.

5.6 The Task Force recommends that the implementation of the new federal pay equity legislation be supported with adequate human and financial resources, so that participants in the pay equity process have access to advice, information and training.

Maintenance and Follow-Up

It is not surprising that the preoccupation of the parties under the current legislation has been with identifying wage discrimination and arriving at an acceptable plan for addressing it. This has proved, for many employers under federal jurisdiction, to be a time-consuming process, and one which has absorbed much of the energy they have to devote to this issue. As we have outlined, much of this is attributable to the uncertainties surrounding the requirements of section 11.

Yet in Ontario, where proactive legislation has been in place for some time, a recent study suggests that, once a pay equity plan has been completed, in accordance with fairly clear standards, employers have not always established mechanisms for review and revision of the plans.[14] Within a few years after the implementation of the plans, it may be difficult for those responsible for administering them to put their hands on information about the genesis of the plans or the rationale for particular aspects of them, or to assess whether their objectives are still being met.

Legislation must make provisions for maintenance and monitoring.

It is important that any new pay equity legislation give careful attention to this issue, and make provision for regular monitoring and follow-up to ensure that wage discrimination does not recur.

5.7 The Task Force recommends that the new federal pay equity legislation include provision for maintenance and follow-up of pay equity plans.

Specialized Oversight Agencies

Wage discrimination is a complicated and multi-faceted problem.

This report is devoted to a discussion of the features of a single issue—that of pay equity. It will be clear from this discussion that tackling wage discrimination is a complicated and multi-faceted problem. In our view, addressing this problem requires expertise which draws on many disciplines in an integrated framework. We have concluded that, although it is necessary to take great care to link the pay equity process with other areas of human rights, human resource management and labour relations, the most effective way of ensuring that pay equity is achieved and maintained is to establish oversight agencies where this multi-disciplinary expertise focused on pay equity can be recruited and encouraged to evolve.

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[14] Gail E. Lawrence. (2003). *Models and Best Practices for Pay Equity Maintenance.* Unpublished research paper commissioned by the Pay Equity Task Force.

Many different views were expressed on this issue during our consultation process. Some of the participants expressed concern that the creation of new pay equity agencies would give rise to new and cumbersome processes, and require the parties, particularly employers, to master a new set of procedures and policies. Others had a different concern, namely that if a proposal for new structures were accepted, these structures would not be given sufficient resources to do the job assigned to them, and that a safer option might be to place responsibility for pay equity oversight with existing agencies.

Specialized pay equity oversight agencies are crucial.

We have weighed these arguments carefully. Our task, as we see it, however, is to make recommendations for a legislative scheme which would be most effective in bringing about the elimination of wage discrimination, and our conclusion is that specialized pay equity oversight agencies would be most likely to attain this end.

Later in this report, we will be discussing the responsibilities which we think oversight agencies should be assigned. It is sufficient here to sketch briefly the set of agencies we contemplate:

- **Canadian Pay Equity Commission**. We are proposing the creation of a new Commission which would be devoted to issues of pay equity. The responsibilities of this Commission would be focused on educating and informing the parties and the public, providing technical assistance in the formulation of pay equity plans, investigating complaints of wage discrimination and studying the effectiveness of the legislation in reducing the wage gap.
- **Canadian Pay Equity Hearings Tribunal**. We think there is a need for a specialized tribunal to adjudicate pay equity issues. The kind of expertise necessary to address these issues in an effective and timely fashion is difficult to cultivate in the context of an agency which deals with a lot of other general human rights matters, and whose members may only occasionally deal with issues concerning pay equity. Though it may be possible, for reasons of administrative efficiency, to establish such a tribunal as a separate panel of the Canadian Human Rights Tribunal, the critical point is that the new tribunal should concentrate its attention on pay equity questions in order to ensure that the requisite expertise is available.

- **A pay equity adjudication system**. We are proposing the establishment of a system of adjudication, similar to the system of grievance arbitration under collective agreements, which would give timely and responsive attention to issues arising under established pay equity plans or other domestic issues. The arbitrators would be chosen from a list of experts maintained by the Hearings Tribunal.
- **Advocacy services**. We are recommending the establishment of services to provide advice and representation to non-unionized women and others who would otherwise not have any way of asserting their rights or ensuring that their interests are protected in the course of the pay equity process.
- **Information**. We are recommending that ways be found of gathering and making available the necessary information about the federal jurisdiction to permit the parties to engage in the pay equity process in a well-informed way.

5.8 **The Task Force recommends that specialized oversight agencies be established to administer and interpret the new federal pay equity legislation.**

A Purposive Statute

Purpose clauses and preambles.

In the context of renewed emphasis by the Supreme Court of Canada on discerning the intention of the legislature in order to assess the appropriate standards for judicial review and intervention, it has become more common to find statements of purpose and preambles attached to statutes. Purpose clauses and preambles do not purport directly to regulate conduct or set standards. They do, however, provide legislators with an opportunity to outline the rationale for passing the legislation, and to state the objectives which the statute is intended to achieve. The courts have looked to these parts of the statute to assist in an understanding of the origins and inspiration of the legislative provisions which are at issue.

Purpose clauses and preambles provide insight.

Purpose clauses and preambles provide insight into the reasons for enacting the legislation as well as an indication of the interpretive framework which legislators have in mind. The *Canadian Human Rights Act*[15] has a purpose clause which reads as follows:

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[15] Canada, *supra*, note 1, s. 2.

2. The purpose of this Act is to extend the laws of Canada to give effect, within the purview of matters coming within the legislative authority of Parliament, to the principle that all individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society, without being hindered in or prevented from doing so by discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability or conviction for an offence for which a pardon has been granted.

In a submission to the Pay Equity Task Force the National Association of Women and the Law (NAWL) envisioned a preamble or purpose clause in the following way:

> NAWL recommends that future legislation on pay equity be preceded by a preamble specifically acknowledging Canada's obligations under international law and the *Canadian Charter of Rights and Freedoms* to achieve women's equality in the workplace. The Preamble should be a statement of principle that provides a human rights framework to guide interpretations of the pay equity provisions and situates pay equity as an important aspect of the federal government's broader obligations to realize gender equality. It should include a reference to the overall objective of upholding human rights and promoting women's equality in the workplace, and it should refer to the federal government's desire to achieve this objective through various laws and programs, such as the *Canadian Human Rights Act* and the *Employment Equity Act*. Pay equity should be cast as one specific way in which the government has tried to ensure the realization of women's equality. It is NAWL's position that such a preamble is necessary to provide a useful interpretative framework for the analysis and application of the legislation.
>
> National Association of Women and the Law (NAWL). Brief to the Pay Equity Task Force, December 2002, p. 27.

It would, in our view, be helpful to include a purpose clause or a preamble in a pay equity statute.

> A preamble and/or purpose clause could also address the federal government's concern to counter the growing "backlash" to pay equity in particular and the misperceptions regarding women's progress towards equality in the workplace.
>
> Mary Cornish, Elizabeth Shilton and Fay Faraday. (2002). *Canada's International and Domestic Human Rights Obligations to Ensure Pay Equity: Obligations to Design an Effective, Enforceable and Proactive Federal Pay Equity Law.* Unpublished research paper commissioned by the Pay Equity Task Force, p. 53.

Such a preamble or purpose clause could:

- allude to the continuing problem of wage discrimination;
- place the legislation in the context of other legislation seeking to advance the objective of obtaining substantive equality for women;
- refer to the international obligations which Canada has undertaken and commitments which it has made to take steps to counter discrimination.

5.9 The Task Force recommends that the new federal pay equity legislation include a purpose clause and/or preamble to provide a context and interpretive framework for the legislation.

Equal Pay for Equal Work

In Chapter 3 of this report, we pointed out that the equal pay provisions of the *Canada Labour Code* were amended so that the primary responsibility for addressing issues of wage discrimination would fall to the Canadian Human Rights Commission, leaving the Labour Program at HRDC with a more limited role.

One effect of these amendments was that reference to the concept of equal pay for equal work was eliminated from the *Canada Labour Code*. As section 11 of the *Canadian Human Rights Act* refers to equal pay for work of equal value, that provision has not been interpreted as governing the principle of equal pay for equal work.

The Canadian Human Rights Commission has, as we have seen, interpreted two sections of the *Canadian Human Rights Act* as covering this issue. These sections read as follows:

> 7. It is a discriminatory practice, directly or indirectly,
>
> (a) to refuse to employ or continue to employ any individual, or
>
> (b) in the course of employment, to differentiate adversely in relation to an employee,
>
> on a prohibited ground of discrimination.
>
> [...]
>
> 10. It is a discriminatory practice for an employer, employee organization or employer organization
>
> (a) to establish or pursue a policy or practice, or
>
> (b) to enter into an agreement affecting recruitment, referral, hiring, promotion, training, apprenticeship, transfer or any other matter relating to employment or prospective employment,
>
> that deprives or tends to deprive an individual or class of individuals of any employment opportunities on a prohibited ground of discrimination.

As we commented in Chapter 3, it is difficult to isolate the number of complaints which have invoked these sections to address equal pay for equal work, but it seems safe to assume that many of the difficulties which attend the process of bringing complaints under Section 11 are applicable to these complaints as well.

The concept of equal pay for work of equal value emerged as a response to the inadequacies of the principle of equal pay for equal work to address all aspects of wage discrimination. This does not mean, however, that the idea of equal pay for equal work is irrelevant to all circumstances, or that the idea of equal pay for work of equal value subsumes that concept. In our discussions with stakeholders, for instance, one of the examples which was put forward was that of university faculty members hired into academic units where there are different balances in the gender makeup, such as physics and nursing. The jobs of university faculty members are defined across institutions in quite generic terms, and include teaching, research and service functions in all academic units. The differences largely arise from differences in the levels at which employees are hired, or in the performance payments which are made to them during their career. In our view, this is a question of equal pay for equal work, and not of equal pay for work of equal value.

It is our view that it is necessary to provide protection for employees who are paid differently for the same work as well as for those who are paid differently for work of equal value. This issue continues to be of importance in many work situations, but particularly in professional- and executive-level jobs, and in the skilled trades, where gender differences may be a conscious or unconscious basis for distinctions in compensation for those whose jobs are essentially the same. In a submission to the Pay Equity Task Force, Femmes regroupées en options non traditionnelles (FRONT) commented:

> [TRANSLATION] Yet, we observe that a wage gap still exists between men and women in the same jobs. This leads us to say that the current legislation only regulates discrimination on the surface. Women remain losers with respect to their right to pay equity.
>
> Femmes regroupées en options non traditionelles (FRONT). Submission to the Pay Equity Task Force, April 2002, p. 1.

Such distinctions may also be made on the basis of membership in a visible minority, Aboriginal ancestry or disability, and it is important to provide recourse for discrimination on these grounds.

One option would be to integrate the tasks of identification and redress for violations of the principle of equal pay for equal work into the structures and processes we are proposing to deal with pay equity.

The issue of equal pay for equal work rests, however, on a different conceptual basis, and it requires a distinct analytical approach. We have concluded that it would introduce unwarranted complications for those establishing a pay equity plan to add equal pay for equal work to their agenda.

We are therefore recommending that the issue of equal pay for equal work be addressed by creating clear provisions in the legislation which would permit complaints to be brought to the proposed Canadian Pay Equity Commission, and, if necessary, adjudicated by the Canadian Pay Equity Hearings Tribunal. The Commission should provide informational materials and advice to make this complaint process known and accessible.

5.10 The Task Force recommends that the new federal pay equity legislation contain specific provisions establishing a process by which complaints may be made to the proposed Canadian Pay Equity Commission, described in Chapter 17, concerning violations of the principle of equal pay for equal work on the grounds of gender, membership in a visible minority, Aboriginal ancestry or disability.

The Broader Picture

Pay equity addresses only wage discrimination.

It should be stressed that pay equity legislation should be seen as a single and limited strategy to address the specific problem of discrimination in wages. It is not a mechanism which can bring about the elimination of all forms of discrimination against women.

In the deliberations of international bodies, it is clear that pay equity is one issue among many which are seen as essential components of eliminating the disadvantage of women. The January 2003 *Report of the Committee on the Elimination of Discrimination against Women* dealt with an extremely diverse range of issues, including education, health, child care, political representation and the status of immigrant women.

As we have seen in Chapter 2, the Government of Canada, after adopting the *Beijing Declaration* and *Platform for Action* in 1995, considered how to develop a comprehensive strategy for addressing discrimination against women. In *Setting the Stage for the Next Century: The Federal Plan for Gender Equality*, the federal government identified a range of issues which required attention in order to achieve equality for Canadian women, and laid out the elements of a comprehensive strategy for addressing these issues in an integrated way.

The emphasis on creating a holistic and comprehensive approach to issues of gender discrimination is commonly described as "gender mainstreaming," a term which came into use after the appearance of the Beijing *Platform for Action*. Though the term is often used in connection with efforts by governments to identify and address the gender implications of all of their policies, it represents an invitation to all social institutions and organizations, private as well as public, to examine their own policies and practices in a way which will reveal any discrimination. It has been defined in materials produced by the Government of Scotland in the following terms:

> [Gender mainstreaming] is a long-term strategy to frame policies in terms of the realities of people's daily lives, and to change government

> organisational cultures and structures accordingly. In other words, it entails rethinking 'mainstream' policy making and service provision to accommodate gender, race, disability and other dimensions of discrimination and disadvantage [...].[16]

As a step towards this objective of integrating consideration of the possible discriminatory impact of all government policies and services, the Government of Canada made a commitment in the *Federal Plan for Gender Equality* to implement gender-based analysis throughout federal departments and agencies.

In our consultations with federal stakeholders and with other interested observers concerning pay equity legislation, we were reminded that any alterations in the system for achieving pay equity must be seen against this wider backdrop.

The National Association of Women and the Law (NAWL) made the following comment in their submission to us:

> NAWL urges that the new federal pay equity legislation acknowledges that pay equity fits into a broader context and cannot alone remedy the inequalities that confront women in the workplace on a daily basis. While adopting proactive pay equity legislation is essential for ensuring women's equality in the workplace, it is not sufficient. Indeed, pay discrimination is just one aspect of a larger picture that requires different forms of government intervention. Accordingly, it is NAWL's position that the federal government adopt a comprehensive approach to improving workplaces for women. Specifically, we recommend that pay equity legislative reform be conducted in tandem with an increase in the federal minimum wage, the implementation of universal childcare, the implementation of workplace policies that accommodate women's needs such as flexible work time, facilitated access to unionization, improved employment equity legislation and policies, and the effective upholding of human rights in the workplace.
>
> National Association of Women and the Law (NAWL). Brief to the Pay Equity Task Force, December 2002, p. 37.

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[16] Scottish Executive. *Learning From Experience: Lessons in Mainstreaming Equal Opportunities*, http://www.scotland.gov.uk/library5/social/lfel-00.asp.

Many of the submissions we received[17] contained similar suggestions for measures which would support the elimination of gender discrimination and the improvement of the economic position of Canadian women in a broader sense.

Though we will be arguing that the special characteristics of the goal of equal pay for work of equal value necessitate measures designed specifically to address this issue, we agree with those who would insist on positioning pay equity legislation as part of an integrated scheme of legislation, government policy and private and community initiatives confronting gender discrimination in a more comprehensive way. Indeed, we will be discussing the possibility that discrimination on grounds other than gender should be part of this wider picture.

5.11 **The Task Force recommends that any new federal legislative scheme directed at the issue of pay equity should be carefully considered in relation to other policies and practices aimed at the elimination of discrimination based on gender.**

5.12 **The Task Force recommends that all federal legislation, policies and practices with the objective of ensuring equality in the labour market and the workplace be consistent with the new federal pay equity legislation.**

Conclusion

In this chapter, we have set out the main features of a pay equity regime which would characterize pay equity as a fundamental human right. The regime would be based on proactive legislation administered by specialized bodies dedicated exclusively to the pursuit of the goal of pay equity.

We considered a range of options for new or revised pay equity legislation. Our choice of the model we have set out here was guided by our understanding of our primary task, which is to decide what kind of regime would most effectively support the achievement of pay equity in workplaces which fall within federal jurisdiction. We are confident that the model we have described is the most likely to achieve this result.

In the chapters which follow, we will be examining particular aspects of the model in more detail, and making recommendations concerning specific features of the regime which we are proposing.

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[17] See, for example, the submission of the Canadian Labour Congress, November 2002, and that of the Confédération des syndicats nationaux, June 2002.

Chapter 6 – Scope of Application

In this chapter, we examine issues related to the scope of application of the proposed legislation. These include the identification of employers and employees who should be covered by the legislation. This chapter also addresses issues related to the delineation of the group of employees whose wages will be compared for pay equity purposes, and suggests criteria for defining the unit of employees which will be used as the basis for formulating pay equity plans.

Comprehensive coverage.

The basic principle we have adopted in making our recommendations in this chapter is that pay equity legislation should be as comprehensive in its coverage as possible. This is consistent with our view that entitlement to non-discriminatory wages is a human right, and that all employees should have access to some means of contesting discriminatory practices. Though questions have been raised as to the feasibility of conducting the analysis necessary to eliminate discriminatory practices where employers have very few employees, or where the employment relationship is of a non-conventional nature, we are persuaded that means can be found to analyse compensation practices with a view to removing discrimination for the vast majority of employers and employees within the federal jurisdiction.

Scope of Coverage

Public Sector and Private Sector

Human rights legislation applies to everyone.

In contrast to the equality provisions of the *Canadian Charter of Rights and Freedoms* (Canadian Charter)—which address the actions taken by Canadian governments—human rights statutes including the *Canadian Human Rights Act* (CHRA), generally apply to both the public and the private sector.

When proactive forms of legislation dealing specifically with pay equity emerged, many provinces—as shown in Chapter 2—limited the reach of these schemes to the public sector or even to the public service. The later legislation enacted in Ontario and Quebec covered both public and private sector employers.

Of these two approaches, we are persuaded that a comprehensive statute covering both public and private employers is to be preferred, for a number of reasons.

No defensible rationale to exempt certain employers.

Since, as we have argued, differentials in wages attributable to gender bias are a form of discrimination, and thus fall properly to be considered in the context of principles protecting human rights, there is no defensible rationale for exempting employers in the private sector from the obligation to eliminate discriminatory wage practices.

Proactive pay equity legislation is more effective.

It should be noted that in a number of provinces where there has been a proactive initiative in relation to the public sector, private-sector employees can still lodge a complaint of discrimination to a human rights commission.

In Chapter 4, we gave our reasons for concluding that a proactive legislative scheme, based on clear standards and criteria, offers a more effective means of achieving pay equity than an exclusively complaint-based system. Given this, it does not seem to us logical to institute a more effective means of attaining pay equity for public sector employees, while maintaining a less effective means of achieving the same goal for employees in the private sector.

> We think changes should also be made with the future in mind—how can we build a new regulatory regime that will be workable for the next five to ten years?
>
> Canadian Bankers Association (CBA). Submission to the Pay Equity Task Force, November 2002, p. 1.

Employers recognize their obligations.

Finally, to their great credit, all the private-sector employers we consulted acknowledged their legal obligation not to discriminate in the matter of wages against their female employees. Indeed, they recognized that they have a responsibility to take positive steps to eliminate discrimination. They do, of course, stress the necessity to devise a practical and realistic way of doing this, which is consistent with their business objectives and the market pressures they face.

Federal Contractors

One way in which the Government of Canada can signify its commitment to the elimination of workplace discrimination is by holding employers with whom it enters into contractual relationships to acceptable human rights standards. Under the Federal Contractors Program (FCP), the federal government requires employers with more than 100 employees who enter into contracts worth $200,000 or more to comply with the *Employment Equity Act*. This contract compliance strategy demonstrates the expectation of the federal government that any goods and services it obtains will be produced in settings where the human rights of employees are respected.

Federal pay equity legislation should apply to federal contractors.

We are recommending that the requirements of the pay equity legislation be applied to federal contractors through the FCP. Where a provincially-regulated employer who is covered by the FCP has established a pay equity plan in compliance with provincial pay equity legislation, provision should be made that this plan can be assessed by the oversight agencies we describe in Chapter 17 to ensure that it is consistent with the requirements of the federal legislation. The criteria which are relevant to this process are set out in Chapter 13 of this report, dealing with the maintenance of pay equity plans.

Parliament as an Employer

In the recent case of *House of Commons* v. *Satnam Vaid and Canadian Human Rights Commission*,[1] the Federal Court of Appeal considered whether the doctrine of parliamentary privilege operates to prevent the Canadian Human Rights Commission from investigating complaints laid by employees of Parliament. The Court concluded that parliamentary privilege cannot exclude parliamentary employees from having access to avenues for asserting their rights under the Canadian Charter and the *Canadian Human Rights Act*.

In giving the reasons for coming to this conclusion, Létourneau, J.A. commented:[2]

> To accept the appellants' contention…is to put the human rights of parliamentary employees beyond the reach of the courts and specialized human rights tribunals established for enhanced protection and enforcement of these rights. It would also give provincial legislatures and Parliament permission to indulge in human rights violations under the disguise of a properly functioning legislative body. Furthermore, it would eliminate an important incentive for parliamentarians to act in accordance with the principles of equality and human dignity enshrined in the *Charter* and human rights legislation…I do not think Parliament intended that their own employees, among all Canadians, be the only ones not protected from illegal or unlawful discriminatory acts. It would be unreasonable to conclude that Parliament intends to take a position so inimical to the fundamental Canadian values and ideals that it is normally dedicated to defend and promote.

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[1] *House of Commons* v. *Satnam Vaid and Canadian Human Rights Commission*. [2002], 45 C.H.R.R. D/1, 2002 FCA 473.

[2] Ibid., para. 65.

Federal pay equity legislation should apply to Parliamentary employers.

We support these sentiments. It is our view that no group of employees should be excluded from having recourse to mechanisms which will permit them to challenge discrimination and assert the human rights which are guaranteed to them under the Canadian Charter and the Canadian Human Rights Act. We are recommending that the pay equity legislation apply to the employees of Parliament.

6.1 **The Task Force recommends that the new federal pay equity legislation should cover all federally-regulated employers in both the public and private sectors, including the Parliament of Canada, and that the requirements of the legislation be imposed on federal contractors through the Federal Contractors Program.**

The Changing Canadian Workplace

There have been significant changes in the Canadian economy and the Canadian workplace since much of the current legislation concerning human rights, labour standards and collective bargaining was put in place. Though it is always difficult to distinguish short-term economic cycles from phenomena which will have a longer-term impact, a number of major trends have been identified in the nature and organization of work.[3]

Smaller employers are increasing.

- **A trend towards smaller employers**

  There has been an increase in the number of smaller employers, and employment has grown faster among smaller employers than in larger workplaces. Employment in smaller workplaces[4] seems to be particularly volatile, with proportionally more job loss in times of economic downturn. There is also a correlation between the size of the employer and unionization and part-time employment. The smaller the size of the employer, the lower the rate of unionization and the higher the proportion of part-time employment.

  As we have pointed out, it is difficult to get an accurate picture of current employment trends in the federally-regulated private sector. One thing is clear, however: employers with less than 20 employees account for approximately three quarters of the total number of federally-regulated employers, and those with between 20 and 99 employees account for close to 20 percent more.[5] In other words, 95 percent of employers have fewer than 100 employees.

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[3] Richard Chaykowski, (2002), *Implementing Pay Equity in the Context of Emerging Workplaces and Employment Relationships* and Monica Townson, (2002), *The Implications of Non-Standard Forms of Work for the Application of Federal Pay Equity Provisions*, unpublished research papers commissioned by the Pay Equity Task Force; and Judy Fudge, Eric Tucker and Leah Vosko, (2003), *The Legal Concept of Employment: Marginalizing Workers*. Ottawa: Law Commission of Canada.

[4] Chaykowski, ibid.

- **Changes in the nature of work**
  There is evidence that there has been a substantial shift away from low-skilled jobs, which affects both men and women, and a shift towards work appropriate to the "knowledge economy". Even in the case of jobs associated with traditional economic activity in resource-based industries and manufacturing, there has been a shift towards higher skill requirements because of technological change in production systems.[6]

Knowledge economy requires higher skills.

- **Changes in the organization of work**
  Accompanying the trend toward a greater demand for higher skills and knowledge-based work have been changes in the organization of work, as the definitions of jobs become more fluid and work patterns become more flexible. Workplace innovations such as production teams, flexible working hours or work locations, and work assignments crossing job categories characterize many workplaces.[7]

Non-standard work increasing.

- **Continued significance of part-time employment**
  Though it has been suggested that the proportion of workers working part-time has increased in recent years, this figure has remained relatively stable at 25 percent to 28 percent over the last 25 years, with the exception of a brief period during the recession of the 1990s when it rose to around 30 percent.[8] Again, it is difficult to be certain what the picture is in the federal sector. It would appear that the proportion is slightly lower in the federal Public Service,[9] and lower again in the banking sector, where the most recent figures suggest that, in 2000, 15.4 percent of employees were working part-time.[10] Though the proportion of the workforce working part-time has thus not increased dramatically, part-time work continues to account for a large number of employees.

Part-time work significant.

- **Trend toward more self-employment**
  The level of self-employment among working Canadians has increased over the past 25 years. In 1976, 12.2 percent

Self-employment growing in importance.

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[5] Ibid.

[6] Ibid.

[7] Ibid.

[8] Townson, *supra*, note 3.

[9] Ibid.

[10] Ibid.

were self-employed; this rose to 17.1 percent in 1997, but had declined slightly to 15.3 percent by 2001.[11] These figures include both own-account self-employed persons and self-employed persons with employees.

Contracting out becoming more prominent.

➤ **Changes in employment relationships**
Economic pressures and new kinds of work have contributed to a trend toward greater variation in the contractual arrangements under which workers are employed. The use of employment agencies or other labour brokers, and employment contracts which characterize workers as contractors rather than employees, are the most common examples of these variations from the standard employment relationship.

Growth rate of self-employed greater for women than men.

As we have seen in Chapter 1, many of these changes have had a disproportionate impact on women. For example, approximately 70 percent of part-time workers are women. The growth of self-employment has been faster in the case of women than in the case of men, and about 70 percent of women in this category are own-account self-employed. The male-female wage gap seems to be greater among self-employed workers than among the general employee population; in 1995, full-year, full-time self-employed women earned 64 percent of the average earnings of self-employed men, while the comparable figure in the total employee population was 73 percent.[12]

> The legislation must incorporate as broad a definition as possible of 'employee' in order to account for the higher percentage of women in non-traditional, non-full-time and precarious forms of employment.
>
> Public Service Alliance of Canada (PSAC). Final Submission to the Pay Equity Task Force, November 29, 2002, p. 14.

Growth in non-standard form of work poses challenges for pay equity.

The changes in the nature of work, the way work is assigned and managed, and in the employment relationship itself must be taken into account in designing a legislative regime to combat wage discrimination. In analysing the implications of these developments for the purposes of making our recommendations, we have been guided by one of our central conclusions—that the entitlement to receive equal pay for work of equal value is a human right. The corollary of this, in our view, is that any pay equity legislation should include as many workers as possible within its scope, rather than excluding them simply because the nature of their employment relationship or the organization of their work does not fall easily into a traditional paradigm. We think this inclusive orientation is all the more important in the current economic environment. The proliferation of contingent forms of work and contractual arrangements which render it difficult to assess who should be considered an employee poses a challenge in creating a legislative regime which will be effective in bringing female workers closer to achieving pay equity. It is important, too, because many of the workers most affected by these changes—those most likely to be in contingent jobs, in non-unionized work, in own-account self-employment—are women, and are therefore part of the class of persons whom the legislation is designed to protect.

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[11] Ibid.

[12] Ibid.

> [TRANSLATION] Systemic discrimination affects all women whether they are professionals, office employees, cashiers, etc. It affects all women whether they work in transportation, banking, telecommunications, etc. It affects all women whether they work full-time, part-time, on contract, on a casual basis, or as independent workers (dependent contractors). The law should cover all women in its application as well as its terms. It should oblige all employers, whatever their size or their sector of activity, to respect pay equity.
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> Confédération des syndicats nationaux (CSN). Submission to the Pay Equity Task Force, June 2002, p. 8.

Size of Employer

CHRA, section 11 – No exemption based on size of employer.

In section 11 of the *Canadian Human Rights Act*, there is no exemption permitting discriminatory wage practices on the grounds of the size of an employer. This is consistent with a rationale for human rights legislation which prohibits discrimination on prohibited grounds by all actors in Canadian society.

> Federal pay equity legislation should cover all employers in the federal jurisdiction regardless of size. In mandating the development of pay equity plans, the legislation should not require the use of a particular form of evaluation system, beyond that it be gender neutral. Smaller employers with fewer employees should be allowed to develop appropriate evaluation systems to meet their requirements, provided that those systems be free of gender bias. There is no reason to exclude smaller employers, particularly given the high proportion of women employed in this sector.
>
> Canadian Labour Congress (CLC). Final Submission to the Pay Equity Task Force, November 2002, p. 5.

However, the two most comprehensive examples of proactive legislation, in Ontario and Quebec, exclude employers with fewer than 10 employees from the coverage of the statutes. This is based on practical concerns with respect to the low number of jobs which are available to be compared in small workplaces, and the interchangeability or lack of definition given to jobs.

Small employer exemption denies an important right.

These practical considerations merit careful thought, and are signals of the dangers of imposing a one-size-fits-all template on employers of all sizes. At the same time, the evidence shows a correlation between the size of an employer and lower wages, part-time and contingent work, lack of unionization and the proportion of women workers. This indicates to us that any exemption for small employers from any obligation to scrutinize their wage practices for discrimination would be to deny an important right to a significant and increasing number of female workers. Furthermore, many new organizations begin with small numbers of employees but expand rapidly within a few years. The inclusion of all employees within the scope of the legislation eliminates any confusion which might arise over when an employer is obligated to commence the pay equity process.

Pay equity methodologies can be adapted for small employers.

Through the decades of attempting to implement pay equity legislation, the participants, as well as consultants, government officials and members of oversight agencies have learned much about how to adapt methodologies for job evaluation and wage adjustment to take into account the size of an employer's workforce. The Bureau de conseil et formation en équité salariale in Quebec, for example, developed helpful templates and materials to assist small- and medium-sized employers, who are less likely to be able to afford costly consulting services or to have professional human resources staff. This methodology consisted of a simpler version of the same pay equity plan, with the same main elements, that is used by organizations of 100 or more employees.[13] The Commission de l'équité salariale [Quebec pay equity commission] has continued to utilize and refine these documents. It should also be noted that, in Ontario, the pay equity plan that the Pay Equity Commission developed for small organizations has the same components as the plan for larger organizations.

In Chapters 10 and 11, we will be devoting detailed attention to methodologies for the evaluation of jobs and the adjustment of wages, and this discussion will give some indication of appropriate methods for dealing with small numbers of employees.

There has been some research done which suggests methods for approaching job evaluation and wage adjustment in extremely small enterprises.[14] Such methods would take into account the low number of comparators, but would enable small employers to cast a critical eye on the relationship between male and female wages in their workplaces, and to correct any discriminatory practices. In the case of workplaces with as few as two or three employees, there may clearly be limitations to these methods, but we are confident that other imaginative ways can be developed to examine wage practices on the smallest scale.

Sectoral initiatives can help small employers.

Another possible vehicle for assisting small employers to comply with the requirements of pay equity legislation is to permit and assist them to form sectoral groupings to undertake job evaluation exercises. These sectoral initiatives allow small employers to share such costs as those entailed in hiring job evaluation consultants and offering training programs, and to benefit from discussion of the common features of their enterprises. In the federal sector, many small employers in such industries as trucking, broadcasting and financial services, are already members of sectoral organizations, and these may form a basis for sectoral activity in relation to pay equity requirements.

The characteristics and needs of small employers mean that it is important for any legislative regime to impose requirements which these employers can reasonably be expected to meet, and to provide them with practical assistance in this regard. At the same time, the special features of smaller employers do not, in our view, outweigh the importance of giving all workers access to an avenue for the rectification of discrimination which closely affects their vital economic interests. We therefore recommend that no lower limit for employer size be established for coverage under the legislation.

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[13] Commission de l'équité salariale. (2002). *Guide for achieving pay equity in enterprises with 10 to 49 employees*. Quebec.

[14] John Kervin. (2002). *Pay Equity in Small Establishments*. Unpublished research paper commissioned by the Pay Equity Task Force.

> The need for simplicity in small enterprises does not mean that no specific guides or guidelines exist. On the contrary, these enterprises—often relatively unstructured in terms of human resource management—have an even greater need than large enterprises for accurate and systematic tools.
>
> Louise Boivin. (2002). *Implementing Pay Equity in Small-to-Medium-Sized Businesses*. Unpublished research paper commissioned by the Pay Equity Task Force, p. 45.

6.2 The Task Force recommends that:

- **the provisions of new federal pay equity legislation setting out the requirements for establishing pay equity plans apply to all federally-regulated employers with fifteen employees or more; and**
- **the provisions of new federal pay equity legislation apply to federal contractors who are covered by the Federal Contractors Program.**

6.3 The Task Force recommends that the new federal pay equity legislation provide that the pay equity oversight agencies described in Chapter 17 of this report be empowered to develop job comparison and wage adjustment methodologies and criteria suitable for employers with fewer than fifteen employees, and to use these to assist small employers to eliminate discriminatory wage practices.

Part-Time, Casual and Temporary Work

Part-time work linked to lower wages and benefits.

The evidence available to us indicates that part-time work continues to constitute a significant component of federally-regulated employment, that part-time work is linked to lower wages and fewer benefits, and that disproportionate numbers of women are in the part-time workforce. These correlations seem to exist as well in the case of casual and temporary work.

The principle on which pay equity legislation rests is that where an employer has assigned a particular value to aspects of the work done by men, the same value should be recognized when the work is done by women. There are, no doubt, practical reasons why distinctions have developed between the wages paid to full-time and permanent workers, and those paid to part-time or temporary workers.

Why should value be attached to work schedules?

In conceptual terms, however, it is difficult to see why value attached to the work done should be affected by the number of hours worked or the number of weeks or months an employee is in the workplace. The right of a female employee to be paid the same wage for doing work of equal value to that done by a male employee does not change because that work is done for fewer hours or on a seasonal basis. As one recent paper put it, this kind of non-standard work is of more theoretical relevance than practical significance to any reform of pay equity legislation:[15]

> It adds some complications with respect to manipulating the gender composition of the job and in determining the job evaluation score of the job and its appropriate measure of pay but not with respect to estimating the relationship between job evaluation scores and pay as well as adjusting pay in undervalued jobs.
>
> In essence, non-standard employment adds some complications to some steps in the process, but most of these issues prevail for regular employees as well and the additional complications for non-standard employees are likely to be small relative to the difficult and contentious issues that exist for regular employees.

We therefore recommend that workers who work part time or on a casual or temporary basis be covered by pay equity legislation.

6.4 The Task Force recommends that the new federal pay equity legislation cover all employees in the federal jurisdiction, including part-time, casual, seasonal and temporary workers, employees of Parliament, and employees of federal contractors covered by the Federal Contractors Program.

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[15] Michael Baker and Morley Gunderson. (2002). *Non-Standard Employment and Pay Equity*. Unpublished research paper commissioned by the Pay Equity Task Force, p. v.

Contractors

In formulating and applying legislation related to employment, one of the challenges is to define the kinds of employment relationships which are intended to come within the scope of the statute. There are innumerable variations in the contractual arrangements under which work is done. In some of these, it is clear that one party is playing the role of employer and the other party the role of employee, and that the characteristics of the traditional "master-servant" relationship are present. Though this kind of relationship has been defined in many ways, the focus of these definitions has been on the control over the decision-making process in the enterprise by the employer, the power of the employer to direct the work done by employees, and the economic dependence of the employee on the employer. The decision-making authority in an employer-employee relationship may be somewhat modified by the presence of a trade union, but the same fundamental characteristics can be identified.

At the other end of the spectrum, there are contractual relationships in which, though one party is providing services to another, both parties are acting as autonomous business concerns. Even if the principal enjoys more economic power than the contractor supplying the services, and can therefore obtain advantageous contractual terms, the contractor is acting as an independent entrepreneur.

Infinite variety of contractual relationships.

Between these two points lies an infinite variety of contractual relationships characterized by different degrees of dependence of the contractor on the principal. The dilemma in formulating and applying statutory policies has been to provide protection for contractors who are really indistinguishable from employees in terms of economic vulnerability, while not imposing responsibility on employers for contractors who really are independent business concerns and who have their own business objectives.

Contracting out gaining prominence.

In the changing landscape of Canadian employment, it appears that employers are resorting more frequently to contractual arrangements other than conventional employment relationships to obtain the services necessary to run their enterprises. The increase in the number of self-employed workers suggests this.[16] Though it is difficult to get a clear picture of what has happened in the Public Service, there has been a gradual decline in the number of employees,[17] and it stands to reason that at least some of the work formerly done by these employees is now done through arrangements with outside contractors.

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[16] Judy Fudge, Eric Tucker and Leah Vosko, *supra*, note 3.

[17] Townson, *supra*, note 3.

> There is no normative or economic justification for permitting discrimination against any worker who provides service personally, regardless of the contractual arrangement under which the service is provided or the form of remuneration stipulated.[18]

Collective bargaining legislation and the employment relationship.

In collective bargaining legislation, several different kinds of approaches have been taken to identifying circumstances in which it is appropriate to treat the relationship as an employment relationship, notwithstanding any indicators of other kinds of contractual characteristics. In Ontario, British Columbia and the federal jurisdiction, collective bargaining legislation creates a category of "dependent contractor" which is meant to distinguish contractors whose relationship with the employer displays enough of the characteristics associated with employment that these contractors should be grouped with employees for the purpose of access to collective bargaining.[19] In other jurisdictions, the legislation does not create such a new category. Rather, the definition of "employee" in the statute permits the labour relations board to determine whether it is appropriate in any given case to view a putative contractor as an employee for purposes associated with collective bargaining. In Saskatchewan, for example, one element of the definition of "employee" permits the Saskatchewan Labour Relations Board to determine that someone is an employee, notwithstanding that in common law, that person is vicariously liable for the actions of someone else—a traditional test for independent contractor status.[20] Another aspect of the definition permits the Saskatchewan Board more generally to classify someone as an employee if, in the opinion of the Board, the relationship is such as to lend itself to collective bargaining.[21]

Independent contractor.

There are also examples from pay equity legislation of efforts to address this issue. In Quebec's *Pay Equity Act*, for example, an "independent operator" is not covered by the statute. This provision goes on as follows:[22]

> An independent operator who in the course of his business carries on activities for a person similar to or connected with those carried on in the enterprise

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[18] Judy Fudge, Eric Tucker and Leah Vosko, *supra*, note 3, p. 108.

[19] Ontario, *Labour Relations Act*, S.O. 1995, c. 1, s. 1; British Columbia, *Labour Relations Code*, R.S.B.C. 1996, c. 244, s. 1; Canada, *Canada Labour Code*, R.S.C., c. L-2, s. 3.

[20] Saskatchewan. *Trade Union Act*, R.S.S. 1978, c. T-17, s. 2(f)(iii).

[21] Ibid., s. 2(f)(i.1).

[22] Quebec. *Pay Equity Act*. S.Q. 1995, c. E-12.001, s. 9.

of that person is considered to be an employee of that person except

1) where he carries on the activities
    a) simultaneously for several persons;
    b) under a remunerated or unremunerated service exchange agreement with another independent operator carrying on similar activities; or
    c) for several persons in turn and supplies the required equipment, and the work done for each person is of short duration; or
2) the case of activities that are only intermittently required by the person who retains his services.

It will be seen that there are several factors which are considered in this provision—whether the independent operator is engaged in activities which are similar to those carried out by the principal enterprise itself, the degree to which the operator is relying on a relationship with this particular client, and relationships with other independent operators.

Status of the Artist Act.

Another approach to dealing with the interests of contractors is represented by the federal *Status of the Artist Act.*[23] This statute is directed at general objectives for enhancing the position of artists in Canadian society. In support of these objectives, the statute provides opportunities for writers, actors, musicians, and other artists to form groupings and to engage in a form of collective bargaining with those organizations which employ them. The Canadian Artists and Producers Professional Relations Tribunal established under the statute has powers similar to those of a labour relations board in that it can approve configurations of artists who can engage in bargaining with the organizations which engage their services.

Ensuring pay equity legislation does not exclude workers.

All of these legislative provisions offer useful suggestions concerning the factors which need to be addressed to ensure that pay equity legislation does not exclude workers whose economic dependence on an employer exposes them to the risk of discrimination of the same kind which faces employees. In this respect, we believe that pay equity legislation should empower an oversight agency to look behind the technical form of a relationship in order to determine whether particular workers should be considered to be employees for pay equity purposes. We recommend that the proposed Canadian Pay Equity Commission (described in Chapter 17), employees, employee organizations and employers should be able to refer this issue for determination to the proposed Canadian Pay Equity Hearings Tribunal, also described in Chapter 17. The legislation should permit the Tribunal to consider such factors as:

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[23] Canada. *Status of the Artist Act.* S.C. 1992, c. 33.

- the degree to which the putative contractors work for a single client;
- the degree of control retained by the employer over the way the work is done; and
- the relationship of the contractor with any employees of its own.

We think the legislation should be worded in a broadly permissive way so that the proposed Commission can develop criteria for use in making these determinations, rather than enumerating them exhaustively in the statute itself.

We are also recommending that the proposed Tribunal be empowered to consider ways in which contractor-employees may be grouped or represented so that they may participate in the formulation of pay equity plans.

6.5 The Task Force recommends that the new federal pay equity legislation:

- **cover contractors whose economic dependence on an employer makes it appropriate to treat them as employees;**
- **empower the pay equity oversight agencies described in Chapter 17 to look behind the technical forms of contractual relationships for the purpose of identifying relationships characterized by economic dependence, and be empowered to develop criteria for making this determination, which would include, though not be limited to:**
  - **the degree to which a contractor works for a single client;**
  - **the degree to which the principal maintains control over the work; and**
  - **the relationship of a contractor with his or her own employees; and**

- **provide that contractor-employees may be grouped or represented so that they may participate in the formulation of pay equity plans.**

Employees of Employment Agencies

Employment agencies or labour brokers.

Another common feature of the current employment picture is the use, by businesses and public-sector organizations, of workers provided by employment agencies or labour brokers. In some cases, these agencies act simply as recruiters of workers for a principal who retains considerable control over the assignment and direction of work, the level of compensation paid, and other terms which are usually associated with an employment relationship. In other cases, the agency itself establishes many of the terms on which the services of workers are made available, and there is a stronger argument for regarding the agency itself as the true employer.

If the employment agency were to be treated in all cases as the employer, this would have special implications for the effectiveness of pay equity legislation. In many cases, labour brokers provide workers for a very limited range of jobs. In the event that a labour broker is supplying workers for the kind of work done predominantly by women, treating the broker as the employer would restrict the availability of suitable male comparators for these groups of employees.

Again, there are examples in collective bargaining legislation of provisions which permit the oversight agency to consider these relationships, and to depart from contractual principles to determine who should be identified as the actual employer for the statutory purposes in question. Saskatchewan's *Trade Union Act*,[24] for example, includes the following definition of who is an employer:

> 2(g) "employer" means...
> (iii) in respect of any employee of a contractor who supplies the services of the employees for or on behalf of a principal pursuant to the terms of any contract entered into by the contractor or principal, the contractor or principal as the board may in its discretion determine for the purposes of this Act [...]

We recommend that a similar approach be taken to this question under pay equity legislation, and that new pay equity legislation empower the proposed Canadian Pay Equity Hearings Tribunal to determine whether it should be the employment agency or the principal employer which is regarded as the employer for the purpose of pay equity analysis. The legislation should make it clear that one of the factors which should be taken into account in making this determination is the availability of male-predominant jobs which can be used as comparators, and that the objectives of the legislation should be the primary basis for making the determination.

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[24] Saskatchewan, *supra*, note 20, s. 2(g)(iii).

6.6 **The Task Force recommends that the new federal pay equity legislation empower pay equity oversight agencies to identify either a labour broker or the principal as the employer for pay equity purposes, and that, in making this determination, the requirements of the legislation, including the availability of male comparators, be the primary basis for designating the labour broker or the principal.**

Successorship

In an economic environment characterized by a high degree of volatility in the structure of businesses and the configuration of public-sector organizations, it becomes difficult to ensure that, once employees have been successful in formulating a pay equity plan with their employer, this plan will survive in the event of the merger, sale or other disposition of all or part of the business or organization for which the pay equity plan was designed.

Sale or disposition of a business.

A sale or other disposition of a business or the privatization of a public-sector organization may result in varying degrees of disruption to the relationship between the successive employers and the employees. In some cases, there is relatively little disturbance to established patterns. However, a new employer may wish to bring about extensive changes in the way the workplace is organized and managed, and these changes may raise complicated questions about existing features of the employment relationship.[25] In addition to the plans of the employer, the transition can be complicated by a number of factors.

For example:

- The existing employees of the new employer may be represented by a different trade union than the employees coming from the purchased business.

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[25] Richard Chaykowski. (2002). *The Implications for Pay Equity of a Change in Business Ownership and Possible Change in Union Certification*. Unpublished research paper commissioned by the Pay Equity Task Force.

- The existing employees of the new employer may not be represented by a trade union while the employees of the purchased business do have union representation.
- The employees of either the existing business or the purchased business may be represented by more than one trade union.
- There may be significant differences in wages and other terms of employment between employees in the existing business and employees in the purchased business.

Ontario's *Labour Relations Act*.

Collective bargaining legislation typically provides that an employer which acquires a business in which the employees are unionized inherits the obligations to recognize the trade union(s) and to observe the terms contained in the collective agreement. Ontario's *Labour Relations Act*, for example, contains the following provision:[26]

> 69. (2) Where an employer who is bound by or is a party to a collective agreement with a trade union or council of trade unions sells his, her or its business, the person to whom the business has been sold is, until the Board otherwise declares, bound by the collective agreement as if the person had been a party thereto and, where an employer sells his, her or its business while an application for certification or termination of bargaining rights is before the Board, the person to whom the business has been sold is, until the Board otherwise declares, the employer for the purposes of the application as if the person were named as the employer in the application.

Questions still arise regarding which transactions are covered by such general provisions; how to deal with the intermingling of groups of employees with different collective agreements or no collective agreement; how to distinguish the sale or alienation of a business from a situation where work is contracted out. These questions are subject to disposition by the labour relations tribunal which administers the statute.

Ontario and Quebec pay equity legislation provides for changes in the ownership or control of business.

The proactive pay equity legislation in Ontario and Quebec has also made provision for these changes in the ownership or control of a business. Ontario's *Pay Equity Act* contains the following provisions:[27]

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[26] Ontario, *supra*, note 19.

[27] Ontario. *Pay Equity Act*. R.S.O. 1990, c. P. 7.

> 13.1 (1) If an employer who is bound by a pay equity plan sells a business, the purchaser shall make any compensation adjustments that were to be made under the plan in respect of those positions in the business that are maintained by the purchaser and shall do so on the date on which the adjustments were to be made under the plan.
>
> (2) If, because of the sale, the seller's plan or the purchaser's plan is no longer appropriate, the seller or the purchaser, as the case may be, shall,
>
> a) in the case of employees represented by a bargaining agent, enter into negotiations with a view to agreeing on a new plan; and
>
> b) in the case of employees not represented by a bargaining agent, prepare a new plan.

It will be noted that there is no specific guidance as to when a plan is "no longer appropriate", but there is recourse to the Pay Equity Office and the Pay Equity Hearings Tribunal for assistance with the resolution of any disputes over this issue.

Quebec's *Pay Equity Act* makes the following provisions for successorship:[28]

> 42. The alienation of the enterprise or the modification of its juridical structure shall have no effect upon obligations relative to adjustments in compensation or to a pay equity plan, which shall be binding upon a new employer.
>
> Where two or more enterprises are affected by a modification of juridical structure by amalgamation or otherwise, the provisions of this Act which apply according to the size of the enterprise shall, in respect of the enterprise resulting from the modification, be determined to be those applicable to the enterprise which employed the greatest number of employees.
>
> 43. Where, because of changed circumstances in the enterprise, the compensation adjustments of the pay equity plan are no longer appropriate to maintain pay equity, the employer shall make the modifications necessary to maintain pay equity.

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[28] Quebec, *supra*, note 22.

As in the Ontario legislation, Quebec's Act contemplates that there may be circumstances where an existing pay equity plan is not appropriate in a new setting, and that it may be necessary to modify an existing plan or devise a new plan.

Employees have a right in any employment situation to be free of wage discrimination.

The experience of employers and trade unions with the question of successorship under collective bargaining legislation brings to light a number of useful parallels.[29] It is important to remember, however, that there is one critical distinction between collective bargaining and pay equity regimes. In the case of collective bargaining legislation, the right to representation by a trade union is not an unqualified one, and a new configuration of employees may always choose to forego trade union representation and coverage by a collective agreement. The premise of pay equity legislation—whether of a proactive nature or not—is that employees have a right in any employment situation to be free of wage discrimination. Though it is useful for the statute to state clearly that this right carries forward into a new business configuration, this right is implied in the basic principles of the legislation. We do, however, recommend that the legislation contain explicit provisions concerning successorship to remind employers of their obligations in this context.

This does not mean that there may not be a number of procedural and technical complexities which attend the transition, and which need to be provided for in the legislation. There may, for example, be a change in the number of male jobs available for use as comparators, changes in the content of jobs, or in the access of employees to trade union representation or advice.

Pay equity legislation must be clear on successorship obligations.

We believe that the legislation can provide guidance on these complex issues, beginning with a definition of what mode of disposing of all or part or a business is covered by the successorship provisions. This definition should, in our view, be as broad as possible, and should make it clear that any transaction in which a public-sector or private-sector employer chooses to yield control over a distinct part of its operations to another falls under the provisions. Given that we have recommended that the legislation also cover as large a range of contractual arrangements as possible, the distinction between a sale or disposition which is regarded as a successorship, and a process of contracting out, is not as critical. It would still be helpful for the legislation to be as clear as possible about what transactions are considered to fall within the successorship category.

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[29] R. Chaykowski, *supra*, note 25.

Employee participation in pay equity process.

It has been suggested that non-unionized employees are in a particularly vulnerable position in circumstances of upheaval and change in the workplace.[30] In Chapter 8, we will be discussing the value of employee participation in the process of achieving pay equity, and stressing the importance of providing avenues for involvement by non-unionized as well as unionized employees in these discussions. We believe that a legislative model in which non-unionized employees are represented in the formulation of pay equity plans will help to ensure that these employees have access to a means of asserting their rights in the context of organizational change.

Roles of proposed Pay Equity Commission and Tribunal.

The proposed Canadian Pay Equity Commission and Canadian Pay Equity Hearings Tribunal[31] would play a crucial role in assisting the parties and making determinations about such issues as whether an existing pay equity plan can be applied, or requires modification or replacement; what male comparators should be used in the event that male comparators have disappeared during a transition; and how outstanding obligations under a pay equity plan can be satisfied in the context of new employment relationships. In Chapter 13, which concerns the maintenance of pay equity plan, we discuss the criteria which may be used in the modification of pay equity plans, or the merger of more than one existing plan. We would recommend that the statute make clear how issues arising out of a transaction creating a successorship can be referred to these bodies for advice, assistance with dispute resolution, or adjudication.

The Task Force on the Review of Part I of the *Canada Labour Code*, chaired by Andrew Sims, Q.C., recommended that the sections of the Code concerning successorship should apply to businesses moving from provincial to federal jurisdiction.[32] A provision to this effect is now included in the Code.

We would recommend that a new pay equity statute similarly provide that an employer moving from provincial to federal jurisdiction be required to comply with the legislation. Where such employers have established pay equity plans pursuant to proactive pay equity legislation passed at the provincial level, it should be open to the Canadian Pay Equity Commission described in Chapter 17 to develop protocols for the assessment and approval of these plans to ensure that they are consistent with the requirements of the federal statute. Such protocols could also be used to assess whether the pay equity plans which federal contractors under the Federal Contractors Program (FCP) have established under proactive provincial legislation meet the standards of the federal legislation.

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[30] Ibid.

[31] Described in Chapter 17.

[32] Task Force on the Review of Part 1 of the *Canada Labour Code*. (1995). *Seeking a Balance: Review of the Canada Labour Code, Part 1*. Ottawa: Public Works and Government Services Canada, 1995.

6.7 The Task Force recommends that the new federal pay equity legislation:

- **provide for the continuation of pay equity obligations when the disposition of all or part of a business or structural change occurs which results in the emergence of a new entity as employer, and that the legislation include a clear definition of the kinds of change which might affect the application of the legislation or of pay equity plans. The kinds of change included in this definition should include, but not be limited to, sale, lease, transfer, merger of businesses, foreclosure under a mortgage, or significant contracting out;**
- **provide clear criteria, including those set out in Chapter 12 of this report, for the application of the legislation, and the continuation or modification of pay equity plans when a successorship occurs, and that these criteria include standards for according priority to a pay equity plan where more than one is in existence; and**
- **contain a section providing for the application of the legislation to employers who move from provincial jurisdiction to federal jurisdiction, and provide clear criteria for the assessment of pay equity plans established under proactive provincial pay equity legislation by these employers, and by federal contractors covered by the Federal Contractors Program.**

Additional Grounds

Disadvantaged groups in the labour market.

In Canada, human rights legislation has identified other grounds, in addition to gender, which may be the basis for unacceptable discrimination. Though the grounds identified vary somewhat from jurisdiction to jurisdiction, they typically include race and ethnicity, mental or physical disability, national origin, family status, sex, and religious belief. In relation to many areas of economic or social opportunity, these statutes have identified four groups that have suffered from historic disadvantage—women, members of visible minorities, Aboriginal people, and persons with disabilities.

With the exceptions of the pay equity sections of Quebec *Charter of Human Rights and Freedoms* and the Yukon's *Human Rights Act*, pay equity legislation has been directed exclusively at wage discrimination experienced by female workers. The origins of most statutory pay equity provisions lay in the fact of occupational segregation for women, and in a demonstrable historic distinction between men's work and women's work which was reflected in their wage levels.

Members of visible minorities, Aboriginal people and persons with disabilities.

There is no question that the material available suggests that members of visible minorities, Aboriginal people and persons with disabilities, have lower earnings than other Canadians.[33] A wage gap exists for both men and women in these groups, though women are at a relative disadvantage within each group. For example, the average salaries of Aboriginal men working full time in the federally-regulated private sector governed by the federal *Employment Equity Act*, were only 84.8 percent of those of all men, while Aboriginal women earned on average 85.7 percent as much as all women. For visible minorities and persons with disabilities, the gap is slightly smaller, but there is nonetheless a clear difference.[34]

It would appear, as well, that persons in these groups are more highly concentrated in jobs at lower wage levels, and correlatively less in evidence in jobs at higher wage levels. For example, 13.6 and12.7 percent, respectively, of Aboriginal and visible minority men earned less than $30,000 compared to 8.6 percent of all men. For Aboriginal and visible minority women, the comparable figures were 26.4 and 19.8 percent, respectively compared to17.8 percent of all women.[35]

Such figures certainly suggest that discrimination on prohibited grounds underlies these differences. The figures showing the distribution of these groups in low wage jobs also suggests that, in the case of racialized women, there is also a compound effect deriving from being both a member of a visible minority and a woman, as the number of women in these jobs is nearly double that of men.[36]

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[33] Canadian Council on Social Development (CCSD). (2003). *Expanding the Federal Pay Equity Policy Beyond Gender*. Unpublished research paper commissioned by the Pay Equity Task Force.

[34] Human Resources Development Canada (HRDC). *Annual Report on the Employment Equity Act*. 2001.

[35] Ibid.

[36] For a discussion of this phenomenon of compound discrimination, see Chapter 1.

We have discussed more fully in Chapter 1 the evidence demonstrating that visible minority workers, Aboriginal workers and workers with disabilities, as well as female workers, experience economic disadvantage in the workplace. On the basis of the research and statistical analysis which has been done, it is more difficult with respect to these other groups to say if these differences in earnings are attributable to wage discrimination stemming from an undervaluation of the work done by workers from these groups. Much more analysis remains to be done of the occupational and compensation patterns of these groups to determine whether their employment environment is marked by the occupational segregation and job stereotyping which has been experienced by women. There must also be adequate analysis of whether there is a workable substitute for the criterion generally used as the basis for comparisons of work in the case of gender-based wage discrimination—the predominance of males and females in the jobs which are being considered.

Disadvantaged groups face multiple types of discrimination.

The evidence does suggest, however that members of visible minorities, Aboriginal people and persons with disabilities experience more than one kind of discrimination. There are clearly barriers to equal access to jobs,[37] and it certainly seems to be the case that there is discrimination in wages affecting members of these groups as such or in combination with other grounds. There is also evidence that, at least in the case of visible minorities, there are some instances of occupational segregation like that associated with female jobs.

We are persuaded that wage discrimination on the basis of these grounds is unacceptable, and is inconsistent with the guarantees of equality contained in the *Canadian Charter of Rights and Freedoms* and the *Canadian Human Rights Act.*

Our current review of the pay equity legislation provides an opportunity to take a step towards addressing wage discrimination which is based on grounds other than gender. In Chapter 9, we show how the presence of significant numbers of members of the other disadvantaged groups in addition to women, or of significant number of female workers who are members of these other groups, can be taken into account in identifying job classes which should be subjected to comparison with male jobs as part of pay equity analysis. In our view, the legislation should also provide that pay equity analysis should occur, and a pay equity plan be developed where occupational segregation leads to the emergence of job classes where members of visible minorities, Aboriginal people or persons with disabilities are actually predominant in number, using the 60 percent threshold we are proposing in relation to women. Current information suggests that there may now be examples of jobs which are strongly associated with visible minorities.[38] It is possible that this pattern may also emerge with respect to other groups. There seems no reason why, in these circumstances, members of these groups should not have access to recourse under pay equity legislation.

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[37] Human Resources Development Canada, *supra*, note 34.

We are therefore recommending that the pay equity statute provide access to the pay equity process on grounds other than gender where, using either the threshold of 60 percent we have suggested to establish predominance for women, or using other criteria set out in Chapter 10, members of other groups are present in particular job classes in significant numbers.

6.8 The Task Force recommends that the new federal pay equity legislation provide coverage against wage discrimination with respect to members of designated groups, where these groups are predominant in a job class according to the criteria described in Chapter 9, and that the federal government carry out the additional investigation and research necessary to broaden our understanding of the reasons for systemic patterns of wage discrimination against visible minorities, Aboriginal people and persons with disabilities, with a view to taking action, under a pay equity statute or otherwise, which can correct such discrimination.

In Chapter 5 of this report, we recommended that the proposed legislation make provision for achieving the objective of equal pay for equal work. The difficulties which are associated with determining the basis on which the legislation might extend the grounds for addressing the issue of equal pay for work of equal value should not prevent an examination of whether members of visible minorities, Aboriginal people and persons with disabilities are receiving equal pay when they are doing the same work as other employees. We are therefore recommending that the equal pay for equal work provisions of the new legislation apply to members of these designated groups in addition to women.

6.9 The Task Force recommends that the provisions of the new federal pay equity legislation which recognize that employees are entitled to equal pay for equal work, and which establish a process for eliminating this form of wage discrimination, should apply to members of visible minorities, Aboriginal people and persons with disabilities as well as women.

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[38] Canadian Council on Social Development (CCSD), *supra*, note 33.

The Unit for Comparison

One of the greatest challenges in devising a regime for the achievement of pay equity is to define the basic unit within which wage comparisons will be made. It is necessary that this unit be aligned with the fundamental decision-making processes of the employer, configured so that comparisons can feasibly be made, and that it provide effective access to pay equity comparisons to the largest possible number of employees. We think it is important to emphasize that the unit be delineated according to criteria which emphasize the achievement of pay equity, though the criteria must also reflect organizational realities.

Though there are a number of labels which might be given to this unit, the term used in much pay equity legislation, including section 11 of the *Canadian Human Rights Act*, is establishment.

Section 11 does not provide any guidance as to the delineation of the establishment. The concept was slightly elaborated in section 10 of the *Equal Wages Guidelines, 1986* which reads as follows:

> For the purpose of section 11 of the Act, employees of an establishment include, notwithstanding any collective agreement applicable to any employees of the establishment, all employees of the employer subject to a common personnel and wage policy, whether or not such policy is administered centrally.

If this was intended to provide a clear approach to the demarcation of the establishment, it did not, unfortunately, have this result. In litigation involving the Canadian Union of Public Employees and Air Canada and Canadian Airlines, the union argued strongly that the meaning of this section was that the establishment was not coterminous with the collective agreement, and that wage comparisons could therefore be made between the flight attendants, mostly female, represented by the Canadian Union of Public Employees (CUPE), and the mechanics and pilots, mostly male, covered by other collective agreements. The employers in these cases argued that the collective agreements constituted the "common personnel and wage policy" by which the boundaries of the establishment were set, and that wage comparisons were therefore limited to employees within a bargaining unit. The decision of the Canadian Human Rights Tribunal, which upheld the argument made by the employers, is currently under review by the courts.[39]

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[39] On March 18, 2004, the Federal Court of Appeal handed down its decision setting aside the decision of the Trial Division and quashing the decision of the Canadian Human Rights Tribunal. See: *Canada (Human Rights Commission) v. Air Canada*, 2004 FCA 113.

Though the term "establishment" has the advantage of familiarity to employers and employee representatives, the use of this word in new pay equity legislation would carry with it the risk that the interpretation given to it would be heavily influenced by the discourse which has taken place in relation to section 11. It is our view that it would not be productive to transport this interpretive baggage into the implementation of a new pay equity regime.

Other terms—*corporation, enterprise, organization*—also may have particular legal or administrative connotations in contexts other than pay equity.

Pay Equity Unit

We are suggesting the use of a term which would be specifically and uniquely associated with the pay equity legislation, and which would clearly signify its function as the basic constituency or unit of analysis exclusively for pay equity purposes. The term we are proposing is *pay equity unit*.

We have concluded that it is important to identify the nature of a pay equity unit which would normally constitute the optimum configuration for the achievement of pay equity. It is important as well, however, to acknowledge the need for flexibility in this respect, so that other configurations which would support this goal would be permitted.

There are a number of ways in which a pay equity unit could be configured, and we will outline several of the possible options here.

Making the pay equity unit coterminous with the bargaining unit. In some respects, there is a strong argument for using the bargaining units which are the basis of collective bargaining relationships as the pay equity unit for the purposes of wage comparisons. In the litigation involving Air Canada and Canadian Airlines, the Canadian Human Rights Tribunal was persuaded that the bargaining unit constitutes the most accurate delineation of the nexus of personnel and wage policies, and administrative arrangements, which characterize the employment relationship in unionized workplaces. The collective agreement represents the terms and conditions of employment for bargaining unit employees, and it establishes rules and practices for the management of work and the resolution of disputes for that group of employees.

Collective bargaining statutes give employees the choice to be represented by a trade union. Once this choice is made, the employer must deal exclusively with the trade union in setting terms and conditions of employment for employees in the bargaining unit, and is required to bargain in good faith towards this end. The institution of collective bargaining has been an important vehicle for giving workers an opportunity to influence the terms and conditions of their employment, and to protect their interests in the employment relationship. It has been strongly argued[40] that the formulation of pay equity plans on the basis of a configuration other than the bargaining unit places this institution in jeopardy.

> It is FETCO's belief that the proper breadth of establishment, in the case of unionized employees, should normally be the bargaining unit as determined by the Canada Industrial Relations Board. The law needs to provide this specifically to prevent the on-going disputes that now exist on this issue.
>
> Federally Regulated Employers – Transportation and Communications Organization (FETCO). Brief presented to the Pay Equity Task Force, June 2002, p. 7.

In Chapter 16, we will be discussing our views concerning the interface between collective bargaining and pay equity. It is sufficient to observe at this point that, although we accept that this is a strong argument, we do not think it outweighs the difficulties inherent in looking to the bargaining unit to set the boundaries of the establishment for pay equity purposes. The outcome of collective bargaining is in many respects a test of economic power between a trade union and an employer. It has been argued that this is a protean characteristic of collective bargaining, that it is appropriate that employees and trade unions who are willing to throw themselves into this kind of warfare should be allowed to reap the benefits, and that employees and trade unions who are reluctant to take industrial action have made other kinds of choices.[41]

This premise for this characterization of collective bargaining, however, is that these choices—between economic warfare and economic peace, between a "weak" union and a "strong" union, between wage gains and other terms of employment—are freely made by employees who have an equal capacity to choose. It is our view that the response of employers to trade unions, and the response of the unions themselves to the aspirations of the employees they represent, are coloured by assumptions which are made about the value of the work which women do in the same way as are the wage policies which have given rise to pay equity legislation in the first place. Though trade unions have taken steps over time to develop policies of inclusiveness and to combat discriminatory practices within their own organizations, there is still a degree of gender segregation in trade union representation. It would be an error then, in our view, to reinforce this segregation in defining the pay equity unit which will be the basis for addressing wage discrimination.

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[40] Paul Weiler, presentation to the Pay Equity Task Force, June 28, 2002; Mark Killingsworth, *Reforming Equal Pay for Work of Equal Value*, submission to the Pay Equity Task Force, November 2002.

[41] Weiler, ibid.; Killingsworth, ibid.

The use of the bargaining unit as the basis for the definition of the optimum unit for achieving pay equity also places non-unionized employees in an equivocal position. Although it is certainly possible to devise statutory provisions which would require that a pay equity plan be devised for these employees, such plans would not be responsive to the same criteria as those created within bargaining units, and it would be difficult for them not to be afterthoughts or "second-order" plans.

> One of the fundamental challenges to the implementation of pay equity is that it was "layered on" over existing pay determination mechanisms that had been determined through collective bargaining.
>
> Richard Chaykowski. (2002). *Achieving Pay Equity Under a Transformed Industrial and Employment Relations System.* Unpublished research paper commissioned by the Pay Equity Task Force, p. iv.

Using regional divisions of employer operations. The establishment as defined by the *Pay Equity Act* in Ontario[42] is based on a geographic description of the employer's operations. This kind of definition attempts to capture the regional variations in the labour market, and creates a unit which is characterized by physical proximity—a practical advantage when employer and employee representatives must devote time to pay equity analysis and planning.

If the factor of geography is relevant in Ontario, it may also be relevant in the federal jurisdiction, where some large employers, including the federal government itself, carry out their operations across vast distances and in regions of the country which vary considerably in terms of the labour market and the costs associated with employment.

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[42] Ontario, *supra*, note 27, s. 1.

Treating all of the operations of an employer as the basis for the definition of the establishment. Quebec's *Pay Equity Act* reflects a considerably different approach to the definition of the basis of analysis. It provides that all of the operations of an employer, with 50 or more employees, will be subject to a single plan.[43] Through the mechanisms for employee participation, which will be described in Chapter 8, all employees, unionized and non-unionized, are involved in the formulation of the plan.

> The most reasonable approach to the locus of comparisons must be the employer's operations. Under the current approach employers can use the bargaining unit and the structure of its operations to avoid compliance. Otherwise, the risk is that seen in cases like Air Canada where there are no or inadequate comparators for the purpose of identifying and eliminating barriers to equality in employment.
>
> Canadian Association of University Teachers (CAUT). Submission to the Pay Equity Task Force, November 2002, p. 25.

Pay equity unit provides broadest coverage.

From the point of view of achieving pay equity, this basis for the definition of the pay equity unit has some positive features. It provides the widest possible canvas for the comparison of jobs, and would thus reflect most accurately the complete range of wage policies followed by the employer. It does not distinguish between unionized and non-unionized employees with respect to the number and kind of comparisons which can be made in determining whether there has been wage discrimination.

Important to have a clear definition of the pay equity unit. Our recommendations concerning the appropriate definition of the pay equity unit for inclusion in new pay equity legislation are based on conclusions drawn from our review of available research and our consultations with stakeholders. Though we believe that it is important to have a clear definition which will constitute the norm for most workplaces, we recognize that this norm will not provide the best basis for the achievement of pay equity in the case of all employers. It is therefore necessary to provide for some flexibility in the application of the definition, and to be prepared to contemplate other possibilities where the situation requires it.

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[43] Though it does provide that a certified trade union can apply to the Pay Equity Commission for approval to establish a separate plan based on a bargaining unit and an employer can seek authorization to establish a separate plan based on regional disparities.

One paper produced for the Pay Equity Task Force contained the following observation:

> Rather than defend a particular definition of "establishment", especially one so narrowly defined, we suggest that the Task Force broaden the meaning of "establishment", yet have it flexible enough to capture the various corporate and organizational structures of all types.[44]

Others have suggested the elimination of any definition, in order to ensure the flexibility to respond to a variety of workplace contexts.

Basis for pay equity analysis.

While we agree that there is a need to provide flexibility, we are not persuaded that there is no need for a basic definition which would constitute the norm. It is necessary, in our view, for the legislation to provide clear guidance as to what would be viewed as the "normal" configuration which would be the basis for pay equity analysis. This would not preclude permitting sufficient flexibility to reflect different kinds of corporate or organizational requirements.

> Pay equity plans should be developed to cover all the employees of an employer. A single plan will ensure that the actual pay policy of the employer is captured.
>
> Canadian Labour Congress (CLC). Final Submission to the Pay Equity Task Force, November 2002, p. 4.
>
> If the legislation is to be proactive it must acknowledge the fact that workforces, even unionized ones, and bargaining units within such workplaces, are often segregated based on gender, racial, and other arbitrary distinctions. A segregated workforce frequently gives rise to segregated bargaining units so that drawing artificial lines around bargaining units for pay equity purposes effectively precludes remedying existing wage gaps.
>
> Ontario Region Women's Committee of the Communications, Energy and Paperworkers Union (CEP). Submission to the Pay Equity Task Force, June 2002, p. 4.

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[44] Jan Kainer and Patricia McDermott. (2003). *Defining the Scope of Implementation of Pay Equity within Federally-Regulated Workplaces: Defining Establishment.* Unpublished research paper commissioned by the Pay Equity Task Force.

Pay equity unit – all operations of a single employer.

We recommend that the definition of the pay equity unit used in federal pay equity legislation be normally based on all of the operations of a single employer, and that each employer be required to formulate a single pay equity plan which covers all of its operations.

> The pay equity plan should apply to all employees of the same legal entity. While this may be difficult to define, the intent should be that all employees of the same business should have the same compensation rights.
>
> Hay Group Limited. Submission to the Federal Pay Equity Task Force, June 2002. p. 18.

6.10 **The Task Force recommends that the new federal pay equity legislation provide that the normal definition of the pay equity unit be based on all of the operations of a single employer, and that each employer be required to formulate a single pay equity plan covering all of its operations.**

Providing for flexibility in the definition of pay equity unit.

We recognize, however, that it is necessary to provide some flexibility in the application of this definition. In our view, it would be appropriate to provide the proposed Canadian Pay Equity Hearings Tribunal with jurisdiction to determine whether a departure from this standard should be permitted in appropriate circumstances, and to look behind technical corporate or organizational structures to determine the optimum configuration for pay equity purposes. This would be analogous to the jurisdiction possessed by labour relations boards to determine the appropriate bargaining unit under collective bargaining legislation; though the stated preference of labour relations boards is for the largest possible bargaining unit—indeed for units composed of all employees of a single employer—they have recognized that other configurations can form the basis for viable collective bargaining relationships.

Standards for determining the employer.

To begin with, it should be open to the parties to seek clarification on the issue of what constitutes a "single employer" in the context of complex modern corporate structures. It may be that several corporations are held under common ownership, but are sufficiently distinct in terms of the nature of their business activities and the kind of work done by their employees that they should each be regarded as separate employers. The standard for making these determinations should be rigorous, and should not turn on trivial or irrelevant distinctions.

Though there may be criteria surrounding the concept of "employer" for other purposes—taxation, for example—the emphasis in making this determination should be on identifying as the "employer" an entity which would provide a coherent and effective basis for the pay equity process.

It is also necessary, in our opinion, to provide for circumstances in which it is not appropriate to include all of the employees of a single employer in a pay equity unit because of the range of economic sectors in which the employer is involved and the size and complexity of its workforce. We are thinking in this respect particularly of the Public Service.[45] Approximately 200,000 employees in the Public Service are employed in 60 different government departments and agencies, are classified in 70 different occupational classifications, and are covered by 17 different collective agreements. Partly in response to pay equity considerations, Treasury Board and the trade unions representing Public Service employees made an effort over a 10-year period to put together a Universal Classification Standard, under which there would be a common taxonomy of job descriptions across the entire Public Service. In 2001, Treasury Board announced that this process was at an end, and that the parties had been unable to devise a comprehensive system which would have common job descriptions for all jobs.

Treasury Board – Determining the pay equity unit.

We are persuaded that Treasury Board and the trade unions involved in discussions aimed at establishing a Universal Classification Standard made a sincere effort to accomplish their goal. We think that it should be possible for Treasury Board[46] to apply for a delineation of more than one pay equity unit within the Public Service to serve as a basis for pay equity analysis. We should stress that, in making this determination, the Canadian Pay Equity Hearings Tribunal should be directed by the legislation to ensure that any subdivision of the Public Service which is approved as a pay equity unit must contain a wide enough range of jobs to provide sufficient male comparators for meaningful analysis according to pay equity criteria—that is, the primary criterion for defining the pay equity unit is to support the effective implementation of pay equity legislation.

Regional differences and a pay equity unit.

In the case of some federal employers, it may be appropriate to recognize that their operations are carried out in economic conditions which vary considerably on a regional basis, and to treat these regional operations as separate pay equity units. In order to obtain approval for a pay equity unit on this basis, it would be incumbent on an employer to demonstrate that there are distinctive economic features in a particular region, not simply that there is an established custom of paying different rates to employees in different parts of the country. It would also be necessary to show that it is feasible to formulate a pay equity plan on the basis of a particular regional configuration. It should also be noted that the concept of defining the pay equity unit on a regional basis must be differentiated from the payment of geographically-based allowances, which are included in the discussion of exemptions in Chapter 12.

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[45] Renaud Paquet and Jacques-André Lequin. (2003). *Interrelations between Labour Relations Processes and Pay Equity: The Specific Case of the Federal Public Service.* Unpublished research paper commissioned by the Pay Equity Task Force.

[46] And possibly other employers, though it is hard to think of another employer which has these characteristics to the same degree.

Flexibility in forming pay equity units.

We also think that the proposed Tribunal described in Chapter 17 should be able, in appropriate circumstances, to approve a pay equity unit which includes more than one employer related by corporate ownership or control, particularly where the separate employers are of small size. This might be appropriate, for example, where small telecommunications or transportation operations have been registered as separate corporations, but have common ownership or an interlocked administrative structures. This would permit the proposed Tribunal to consider whether corporate structure is a means of maintaining occupational segregation, and whether a broader-based pay equity unit would provide a more viable unit for pursuing the goal of pay equity.

In considering any of these deviations from the pay equity unit consisting of all the employer's operations, the primary factor should be whether the standards set out in the legislation can be met. If a different form of pay equity unit will significantly detract from the ability of an employer to meet the requirements of the legislation, the alternative configuration should not be allowed.

6.11 **The Task Force recommends that the new federal pay equity legislation provide that the pay equity oversight agencies described in Chapter 17 be empowered to approve modifications of the definition of the pay equity unit in special circumstances which would include the following, where this configuration is not inconsistent with the effective implementation of the legislation:**

- **a corporate structure where entities which are related operate *de facto* as separate employers;**
- **operations by an employer which are in separate and distinct industrial sectors;**

- **operations of an employer which are carried out in different regions of the country where there are differing economic environments; and**
- **situations where pay equity legislation could be applied more effectively if related employers were treated as a single pay equity unit.**

Recommendation 6.11

Dissenting recommendation by Professor Marie-Thérèse Chicha, Member, Pay Equity Task Force.

I fully endorse the principle that employers should have a single pay equity plan to cover all employees. Exceptions from this principle, as we indicate in our Report, must be narrowly construed. Nevertheless, I am proposing an additional recommendation that extends the same rights to employee representatives as those given to employers under Recommendation 6.12.

This additional two-part recommendation reads as follows:

6.11a The pay equity oversight agencies described in Chapter 17 will have the mandate to authorize the establishment of separate pay equity plans within an employer's operations in the following instances:

  - **at the request of a certified employee association on behalf of the employees it represents; and**
  - **at the request of representatives of a non-unionized employee organization on behalf of the employees they represent.**

6.11b The oversight agencies must issue clear guidelines outlining the criteria that would justify the establishment of separate pay equity plans.

Sectoral committees and pay equity.

As the primary responsibility for ensuring that wage discrimination is eliminated in this scheme rests on the employer, it is necessary to define the pay equity unit in a way which will ensure that each employer can and does fulfil the requirements of the statute. There are advantages, however, in our view, to encouraging employers, particularly small employers, to collaborate in some aspects of the pay equity process.

There is a concern among some private sector employers about the administrative costs of implementing proactive legislation, especially in less developed or more vulnerable economic sectors. This concern that the legislation may have a negative impact on less solid sectors could encourage some of those employers to pool their resources to develop pay equity tools and processes, such as a gender-neutral shared job evaluation systems that would reflect the work characteristics of employees in that sector. At the federal level, such initiatives were applied on a relatively limited scale in the early 1990s; a few sectoral initiatives were created in Ontario as well.

The Quebec legislature decided to include a chapter in Quebec's *Pay Equity Act* specifically for the creation of sectoral pay equity committees. Their responsibilities are described in the legislation as follows:

> 44. A joint sector-based association, one or more employers' associations and one or more employees' associations, a parity committee or any other group recognized by the Commission, including a regional group, may, with the approval of the Commission, form a sector-based pay equity committee for a sector of activity.
>
> 45. A sector-based pay equity committee shall be composed of an equal number of representatives of employers and representatives of employees. The Commission shall lend assistance to the committee.
>
> 46. The mandate of a sector-based pay equity committee is to facilitate the work of pay equity committees, or of employers in the absence of such committees, in establishing pay equity plans, by developing the following elements:
>
>> 1) the identification of major predominantly female job classes and of major predominantly male job classes;
>>
>> 2) the description of the method and tools to be used to determine the value of such job classes;
>>
>> 3) the determination of a value determination procedure.
>
> A sector-based committee may also develop any other element relative to pay equity plans.

> No element developed by a sector-based committee may discriminate on the basis of gender.
>
> 47. Elements developed under section 46 shall be submitted to the Commission for approval.
>
> If they are approved by the Commission, the elements can be used in the determination of adjustments in compensation or in the establishment of a pay equity plan within an enterprise of the sector concerned. The pay equity plan must, nevertheless, be completed so as to satisfy the other requirements of this

One major advantage of sectoral pay equity committees is that they allow for identification of male comparators in predominantly female sectors. As we will see later, that is why these committees are created mainly in that type of industry.

The role of the Quebec pay equity commission is twofold with respect to the creation of sectoral pay equity committees: it assists the committees with the support needed to ensure their process is compliant and it approves or rejects the elements of the pay equity plans developed by the committees. All the elements of a pay equity plan approved by the Commission are made public, and the Commission must provide the contents of a plan, upon request.

Under this legislation, a number of sectoral initiatives have been taken, in sectors such as tourism, furniture-making, day-care and the operation of Jewish schools in Montreal.

In the clothing manufacturing sector, the workforce has a high concentration of women workers and relatively low wages compared to other areas of manufacturing. It is also characterized by relatively unstructured human resources management. The sectoral pay equity committee, approved for this sector by Quebec pay equity commission has developed a methodology and a process for job evaluation. In addition the committee has drafted 60 job descriptions for the clothing sector, developed a method of calculating wage adjustments, formulated a communications plan, and introduced training sessions concerning pay equity. Though this sector has had extensive experience under the sections of the *Pay Equity Act* which provide for sectoral activity, there are other sectors where the legislation has also inspired employers to work together to put a pay equity process in place.

Though employers remain responsible for the elimination of wage discrimination in their own workforces, they are able to benefit from pooling their resources. A study[47] commissioned by the Pay Equity Task Force showed that the major benefits resulting from pay equity sectoral committees include the following:

- reduced costs;
- development of expertise among stakeholders in a industrial sector;
- improved labour relations;
- development of formal management structures;
- sharing of experience;
- protection of non-unionized workers;
- incentive to apply the legislation; and
- standardized pay equity elements.

The early results of the experience under the sectoral provisions of the Quebec legislation are encouraging, and it is our view that this model would have benefits for many employers under federal jurisdiction.

6.12 The Task Force recommends that the new federal pay equity legislation provide for the approval of sectoral pay equity committees by the oversight agencies described in Chapter 17.

The Territorial Governments

Federal legislation and territorial governments.

The territorial governments are in a unique position as concerns the application of federal legislation. Section 66 of the *Canadian Human Rights Act* (CHRA), for example, provides that the federal government can proclaim that the CHRA does not apply in the Northwest Territories, Nunavut or the Yukon Territory, to clear the field for legislation enacted by a territorial government. Such a proclamation has been made in the instance of the Yukon, but not in the case of the Northwest Territories. The Government of the Northwest Territories has also enacted human rights legislation, which applies to the Public Service and to employers under territorial jurisdiction. Part I of the *Canada Labour Code* does not cover the Public Service in the Northwest Territories, though it does cover other federally-regulated employers; the Public Service is regulated by the Northwest Territories' *Public Service Act*. Part III of the *Canada Labour Code* applies to all federally-regulated employers in the Northwest Territories, but not to "local or private businesses."[48]

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[47] Éric André Charest. (2002). *Sector-Based Pay Equity Committees in Quebec Under Chapter III of the Pay Equity Act: Survey and Description of the Leading Sector-Based Initiatives.* Unpublished research paper commissioned by the Pay Equity Task Force.

In designing and implementing a new federal regime for pay equity, it is necessary to consider carefully its potential application in the territories. On the one hand, the federal government is clearly committed to encouraging self-determination and suitable local legislative solutions in the territories. On the other hand, the government also has a responsibility to ensure that acceptable human rights standards are maintained.

Territorial autonomy and federal government responsibility.

Though we do not presume to come to any definitive conclusion about where the balance between territorial autonomy and federal government responsibility should be, we think it important that the proposed pay equity legislation give a clear indication of how it would apply in the case of each of the territories, and specify the circumstances under which the federal government would vacate the field in favour of territorial legislation.

6.13 **The Task Force recommends that the new federal pay equity legislation specify how it is to apply to the territories, and define the circumstances in which the federal government would vacate the field in favour of territorial legislation.**

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[48] These points were made in a presentation to the Pay Equity Task Force by the Government of the Northwest Territories at public hearings in Yellowknife on April 29, 2002.

Chapter 7 – The Pay Equity Plan

Proactive approach.

In this chapter we examine the general principles of a pay equity plan. Proactive legislation is particular in providing a relatively detailed description of the methodology for developing and applying such a plan. The plan provides the framework for making wage comparisons between equivalent jobs and determining pay equity adjustments.

During our consultations, a number of stakeholders were critical of the lack of clarity and guidance in the current federal pay equity legislation with respect to a number of elements, including pay equity plans and timeframes. It is therefore important that the legislation provide clear guidance concerning the essential components which must be included in a pay equity plan, as well as the steps which must be taken to put a plan in place.

> Guidelines and best practices could be developed to assist employers regarding development of a plan; selection of a job evaluation system and its application; identification of male-dominated and female-dominated job classes; application of an appropriate comparison methodology; wage adjustment where necessary; participation of employees in the process; and maintenance.
>
> Canadian Bankers Association (CBA). Submission to the Pay Equity Task Force, November 2002, p. ii.

> Federal legislation should specify that the employer must ensure that no element of the pay equity plan discriminates on the basis of gender or race and that all elements are applied on a gender neutral basis.
>
> Canadian Labour Congress (CLC). Final Submission to the Pay Equity Task Force, November 2002, p. 5.

The Elements of a Pay Equity Plan

Identifying jobs, evaluating jobs, and determining wage gaps.

A pay equity plan is intended to provide a framework for the pay equity process to ensure the outcome is consistent with the objectives of the legislature. The implementation of pay equity involves three basic steps:

- ➤ identifying gender predominance in jobs;
- ➤ evaluating those jobs; and
- ➤ determining wage gaps between jobs deemed to be equivalent.

Each of these three elements requires a series of operations that are described in proactive pay equity legislation.

In order to ensure that pay equity plans reflect consideration of these essential elements, proactive legislation typically sets out a systematic process for addressing significant issues. Specific time frames for the accomplishment of each stage of the process are usually identified as well. A fuller discussion of time frames is included in Chapter 15.

Prince Edward Island's *Pay Equity Act*.

An examination of proactive legislation in various jurisdictions reveals differences in the description of the contents of the plan and the steps required to formulate the plan. A useful example of how the elements of the pay equity plan are linked to time limits is found in Prince Edward Island's *Pay Equity Act.*[1] Subsection 17 (1) sets out the stages of pay equity implementation and specifies the duration of each individual stage:

> 17.(1) For the purpose of complying with the provisions of this Act there are the following stages in the implementation of pay equity:
>
> STAGE I is the period of nine months from the commencement of negotiations in which the parties shall negotiate and agree to a single gender-neutral job evaluation plan or job evaluation system and the fixing of the classes to which the plan is to be applied.
>
> STAGE II is the period of twelve months after the end of Stage I in which parties shall apply the evaluation plan or system in order to determine and compare the value of the work performed by female-dominated and male-dominated classes and shall agree respecting the quantum of pay equity

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[1] Prince Edward Island. *Pay Equity Act,* R.S.P.E.I. 1988, c. P-2.

> adjustments and the proportionate share of the quantum to be allocated to each employee group.
>
> STAGE III is the period of three months after the end of Stage II in which the individual bargaining agent and the public sector employer or his representative shall agree respecting the allocation of the quantum of pay equity adjustments among the female-dominated classes of employees who are represented by that bargaining agent and respecting the implementation of pay equity adjustments.
>
> STAGE IV is the period in which pay equity adjustments are made under this Act until pay equity is achieved and Stage IV commences no later than twenty-four months after the beginning of Stage I.

It appears clear that the legislators recognized the need to provide guidance and include comprehensive timeframes for each stage of the pay equity implementation process in the legislation. Nova Scotia's[2] legislation is fairly similar in terms of plan content and timeframes.

Ontario's *Pay Equity Act.*

The Ontario pay equity legislation specifies some of the elements which must be included in a pay equity plan. Subsection 13(1) of the *Pay Equity Act*,[3] requires that the plan

(a) shall identify the establishment to which the plan applies; and

(b) shall identify all job classes which formed the basis of the comparisons under section 12.

Under subsection 13(2) of Ontario's pay equity legislation, a pay equity plan must also include:

- the identification of gender predominance for job classes;
- the gender-neutral comparison system;
- cases that constitute exceptions under the Act;
- the dates the adjustments will be paid.

Though this legislation provided an indication of the steps required in the formulation of a pay equity plan, participants in the system and other commentators still expressed some concern as to whether the legislation was sufficiently specific. Drawing on this experience, the Quebec pay equity legislation provides for a more specific structure with respect to the elements that are in a pay equity plan.

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[2] Nova Scotia. *Pay Equity Act.* R.S.N.S. 1989, c. 337.

[3] Ontario. *Pay Equity Act,* R.S.O. 1990, c. P.7.

In addition to referring generally to the three essential components of a pay equity plan—the identification of gender predominance, the evaluation of jobs and the calculation and payment of wage adjustments—the Quebec pay equity legislation is unusual in that it requires the participants to describe clearly the methods, tools and processes which are used in formulating the plan, and to assure that they are gender inclusive.

Section 50 of Quebec's *Pay Equity Act* clearly states the elements that should be included in a pay equity plan.

> 50. A pay equity plan shall include
>
> 1) the identification of the predominantly female job classes and of the predominantly male job classes in the enterprise;
>
> 2) the description of the method and tools selected
> to determine the value of job classes and the development of a value determination procedure;
>
> 3) the determination of the value of the job classes, a comparison between them, the valuation of differences in compensation and the determination of the required adjustments;
>
> 4) the terms and conditions of payment of the salary adjustments.[4]

The Quebec legislation provides a deadline of four years for the completion of all stages of the pay equity process, though no specific indication is given of other timeframes for the accomplishment of each stage.

The existing legislative examples we have described suggest a number of ways in which the pay equity process may be structured. Pay equity legislation in Quebec, the most recent in Canada, introduces the notion that the development and articulation of the methods, tools and processes used in achieving pay equity require explicit attention. To reflect the importance of this idea, we are recommending that this aspect of the formulation of the pay equity plan be treated as a distinct stage in the process. The process we are proposing would therefore consist of five stages, rather than the four set out in the Quebec pay equity legislation. The process described in this way would also provide employees with a clear opportunity to comment on the tools, methods and processes before they are used in the tasks of job evaluation and wage adjustment, as we outline in Chapters 8 and 10.

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[4] Quebec. *Pay Equity Act.* R.S.Q. 1995, c. E-12.001.

7.1 The Task Force recommends that the new federal pay equity legislation specify that the pay equity plan include the following steps:

1. **identification of the jobs to be compared and their gender predominance;**
2. **development of the evaluation method, tools and process;**
3. **evaluation of gender predominant jobs using the selected method, tools and process;**
4. **determination of total remuneration for those jobs, the wage gaps and any necessary salary adjustments; and**
5. **determination of the terms of payment for salary adjustments.**

Conclusion

In earlier parts of this report[5], we have outlined the conceptual framework within which the participants in the pay equity process take the steps outlined above to formulate their pay equity plans. In those chapters, we addressed issues related to how the pay equity unit should be defined, and emphasized the values of flexibility and inclusivity which must underpin and pervade the process.

In the sections which follow, we will be discussing in detail the most critical aspects of the steps we have laid out in this chapter, and we will highlight the elements which we think should be included in federal proactive pay equity legislation. In this analysis, we will be guided by submitted briefs and consultations with experts, case law, research findings (particularly research commissioned by the Task Force), and federal and provincial guidelines.

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[5] See, in particular, Chapters 5 and 6.

The elements we will be considering in the remainder of our report will include the following:

- mechanisms for employee participation;
- criteria for determining gender predominance;
- methodologies, tools and processes for evaluation of jobs;
- calculation of total remuneration, and methodologies for comparing wages and measuring wage gaps;
- determination of the terms of payment; and
- ways of maintaining and enforcing pay equity plans.

Though we have alluded to the need for flexibility, we have responded in this chapter to the call from stakeholders for clarity in the legislation with respect to the steps which must be taken to formulate a pay equity plan. Clear statutory guidance for the participants in this respect will help to assure that the legislation attains a high level of compliance.

Chapter 8 – Employee Participation

Employee participation helps guarantee compliance.

Employee participation in pay equity implementation is an important characteristic of most proactive pay equity legislation adopted in Canada. Employee participation may occur at many stages, ranging from the creation of a pay equity committee to the posting of a pay equity plan's results. Such participation is a means of ensuring an objective process that complies with the legislation's primary aims.

This participation meets a fundamental objective of pay equity, which is to enhance the visibility of the various overlooked aspects of women's work. However, to ensure this visibility, the participation of the women performing these tasks is essential. They have the direct knowledge of the numerous requirements of their jobs and they can speak with conviction of the difficult and demanding aspects of those jobs. Furthermore, their participation not only guarantees that information about their respective duties will be enhanced but also that this knowledge will actually be taken into account at the various stages of the formulation and implementation of the pay equity plan.

Subsection 14(2) of Ontario's *Pay Equity Act*[1] clearly indicates the joint responsibilities of the employer and the bargaining agent.

> 14(2) The employer and the bargaining agent for a bargaining unit shall negotiate in good faith and endeavour to agree, before the mandatory posting date, on,
>
> (a) the gender-neutral comparison system used for the purposes of section 12; and
>
> (b) a pay equity plan for the bargaining unit.

These provisions apply to all public sector employers, private sector employers with 100 or more employees, as well as employers with 10 to 99 employees who have chosen to establish a pay equity plan.

Employee participation under pay equity legislation in Quebec.

Quebec's legislation[2] further details the participation of employees and proposes a more structured model pursuant to sections 16 to 30, which apply to public and private organizations with 100 or more employees. The principle of setting up a pay equity committee is defined under section 16.

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[1] Ontario. *Pay Equity Act.* R.S.O. 1990, c. P.7.

[2] Quebec. *Pay Equity Act*, R.S.Q. 1995, c. E-12.001.

> 16. An employer shall enable employees to take part in the establishment of a pay equity plan by setting up a pay equity committee on which they are represented.

Employee participation is also found in other kinds of legislation or policies, where its purpose is to ensure that application is adapted to the characteristics of the workplace and to the needs of employees. Legislation related to occupational health and safety is one example. Chapter 16 of our report provides an overview of the important parallels between the legislative framework we are proposing for pay equity and the existing legislative framework for occupational health and safety legislation which usually provides for joint workplace committees.

Types of employee participation.

There are many models of employee participation. At one end, we find collective bargaining, representing a well-structured model covering a large range of normative and monetary aspects of work. The results of collective bargaining are imposed on both workplace parties. At the other end, we find some less formal initiatives, which focus on a certain aspect of work but have no binding effect, such as ad hoc committees to solve a very specific production problem.

Employee participation in the pay equity process appears to be consistent with a growing trend for organizations to consult employees and provide them with information on matters of importance. In the box below, the Canadian Bankers Association describes some of these mechanisms.

> Some banks, for example, survey employees twice a year. Surveys include questions about compensation, the degree of employee satisfaction regarding fairness and comprehensiveness in their total compensation package, and the degree to which the employee believes his or her compensation is appropriate to effort and performance.
>
> Focus groups provide another effective approach for obtaining employee input. Some banks conduct focus groups on a regular basis. They may be system-wide or they may be conducted in selected areas of the organization as issues or businesses shift and change or the employer wishes to launch a new initiative and is seeking employee input as part of the process.
>
> Canadian Bankers Association (CBA). Submission to the Pay Equity Task Force, November 2002, p. 8.

This kind of employee contribution serves to maintain a more open workplace with less conflict, and its merit must be acknowledged. However, this type of participation depends on the goodwill of the employer and does not allow employees to share in decision-making authority with respect to the issues in question.

Pay equity is a question of human rights.

Pay equity implementation, although part of human resource management, is a question of human rights which must be respected. It is not simply a matter of making a change in work organization or new production technology more effective. Above all, the goal of employee participation in pay equity must be to advance the legislation's fundamental objective. To that end, it must be based on methods whose effectiveness has been verified in different settings. In this chapter, we will examine the various types of employee participation needed to ensure that the legislation's objective is achieved. We will base the analysis on the methods implemented in a number of jurisdictions, focussing mainly on those considered to be best practices.

Employee Participation: An Important Guarantee of Compliance with the Legislation's Fundamental Objective

Employee knowledge necessary to detect and eliminate wage discrimination.

Pay equity implementation is more than just one element of the human resource management system in which the employer's right of general stewardship prevails. As a human right, pay equity is a matter of public policy that the courts have ruled to be quasi-constitutional. Whatever its form, employee participation is needed to eliminate systemic wage discrimination. This type of discrimination is hard to detect, as it often results from longstanding practices and attitudes that have been accepted as normal in the workplace. The pay equity implementation process requires a thorough knowledge of different jobs in order to create effective, non-discriminatory tools, to identify the requirements of predominantly female jobs that have been ignored, or even to properly define and apply the concept of total remuneration in the calculation of salary adjustments.

Employee participation improves results.

Because employees have specific or first-hand knowledge of the jobs in an organization, their participation offers a better guarantee of achieving these results.

> Involvement in decision making appears to improve acceptance of decisions and reduce resistance to their implementation, as already mentioned. The participation of employees with shop-floor knowledge can also result in better decisions and solutions to troublesome problems.
>
> Carol Agocs. (2003). *Involvement of Workplace Partners in Pay Equity Implementation and Maintenance.* Unpublished research paper commissioned by the Pay Equity Task Force. p. 12.

Morley Gunderson indicates the vital role of unions:

> In proactive systems (such as Ontario) that do not rely on complaints, unions can be especially important in providing information in areas such as job evaluation, finding appropriate comparator groups, the appropriate definition of the employer and pay (including non wage compensation), estimating pay lines, determining exemptions and exclusions, and representing workers before tribunal hearings.[3]

However, we think there is no justification for discriminating in terms of participation by excluding non-unionized employees or by limiting their participation, as some laws have done.

> [TRANSLATION] One major challenge for this legislation is to ensure that all employees are able to really defend their interests in order to eliminate any wage discrimination. Thus the need for active, enlightened participation by unionized and non-unionized workers, both men and women.
>
> Fédération des travailleurs et des travailleuses du Québec (FTQ). Summary of comments submitted to the Pay Equity Task Force. April 2002, p. 9.

Wage discrimination can affect all employees, and more particularly certain non-unionized female workers. In fact, as shown in Chapter 1, gender wage gaps are generally smaller for unionized workers, which suggest that the interests of non-unionized workers are particularly in need of protection.

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[3] Morley Gunderson. (2002). "The Evolution and Mechanics of Pay Equity in Ontario." *Canadian Public Policy-Analyse des Politiques*, May 2002, Vol. 28, Supplement 1, p. S127.

Consequently, all forms of participation provided for under the legislation must be accessible to both unionized and non-unionized employees.

8.1 **The Task Force recommends that the new federal pay equity legislation provide that all employees, whether unionized or not, have the right to participate in pay equity implementation and maintenance.**

It should be noted here that this is an employee right rather than an obligation. In other words, an employee could refuse to participate without having to explain his or her decision and without being subject to disciplinary action.

Employer responsibility.

Employee participation essentially aims to make the process more effective and compliant with the legislation. The employer therefore remains responsible for achieving and maintaining pay equity without gender discrimination.

> Legislation should put the responsibility and accountability on employers to ensure that the policies and practices in their workplaces are equitable and non-discriminatory and that the basic human right of equal pay for work of equal value is entrenched.
>
> Canadian Federation of Business and Professional Women's Clubs (BPW Canada). Supplementary submission to the Pay Equity Task Force, January 2003, p. 6.

8.2 **The Task Force recommends that the new federal pay equity legislation provide that the employer is responsible for ensuring that pay equity implementation and maintenance are free of gender discrimination.**

The Pay Equity Committee

Role of employees on committees.

As we have seen, the determination of pay equity adjustments is the culmination of a multiple-step process. These steps include identifying which predominantly male and female jobs will be compared, choosing the job evaluation method, evaluating jobs, and calculating wage gaps. These elements are also an integral part of maintaining pay equity in an organization open to organizational, technological or commercial changes. Clearly, employee participation in such a complex and lengthy process must be well planned and structured. An informal process may lack rigour and prevent the legislation's fundamental objective from being achieved. Where employee participation has been recognized as a valuable feature of the pay equity process, it has often taken the form of committees with defined tasks.

These committees are composed of employer and employee representatives. In some instances, the process has involved one committee charged with carrying out the evaluation of jobs, and another which uses the results of the job evaluation to identify needed wage adjustments.

Quebec: single, structured pay equity committee.

Drawing on the experience of other legislative regimes as well as the model developed in occupational health and safety legislation, Quebec, as mentioned earlier, chose a structured model of employee participation, that of a single pay equity committee. Such a committee ensures a systematic process anchored in a good understanding of the work environment because of the participation of a variety of members. The advantage of a single committee is that the collective expertise of its members can be applied to the process from beginning to end, and the criteria which are developed can be applied consistently.

Though the Quebec legislation requires the establishment of a pay equity committee only in workplaces with 100 or more employees, it is our view that this mechanism—a single pay equity committee, with employee and employer representatives—would be an effective vehicle for employee participation and would enhance the soundness and credibility of the pay equity process in workplaces of any size.

8.3 The Task Force recommends that the new federal pay equity legislation provide that every employer is obligated to create a pay equity committee on which all employees are represented.

Pay equity as a human right cannot be bartered along with labour relations issues in an organization, as clearly expressed by the National Association of Women and the Law:

> Although unions are involved in pay equity negotiations in Ontario and Québec, pay equity negotiations are conducted separately from regular collective bargaining. This is important because pay equity must not become subject to the tradeoffs and compromises of collective bargaining. Pay equity, as anti-discrimination law, is a matter of fundamental human rights, and should not be subject to tradeoffs in bargaining. Further, where pay equity issues remain in a separate sphere, the interests of women are not pitted against those of men, thereby reducing the potential for internal union conflict.
>
> National Association of Women and the Law (NAWL). Submission to the Pay Equity Task Force, December 2002, p. 27.

This view is widely supported by unions.

> We agree with the position taken by other unions that the process of negotiating pay equity must be separated from the regular bargaining of a collective agreement so that there is no possibility that pay equity objectives could be traded off in exchange for other, more general, collective bargaining demands.
>
> National Automobile, Aerospace, Transportation and General Workers of Canada (CAW-Canada). Submission to the Pay Equity Task Force, June 2002, pp. 7-8.

It is therefore important to emphasize that the pay equity committee must be separate from any collective bargaining committee as will be discussed in Chapter 16.

The Mandate of the Pay Equity Committee

There is a strong correlation among the many elements of a pay equity plan, a correlation that will determine the final outcome. For example, if from the outset a job is determined to be neutral rather than predominantly male, at the end of the process adjustments will likely be unjustifiably smaller. The purpose of pay equity is not to give predominantly female jobs a maximum wage increase, but rather for increases to result from a process that is free of gender-based discrimination. If electing to make a job neutral does not seem to meet the legislation's criteria and its effect is to remove a comparator with high wages from the comparison, that decision is most likely discriminatory. Including employee representatives in the decision-making body will allow for that type of decision to be challenged and possibly rejected.

Committee must oversee entire implementation and maintenance of the pay equity plan.

As the pay equity process continues, it becomes even more obvious how decisions that seem purely technical substantially affect the achievement of pay equity. These include, for example, the elements of the evaluation method, the elements included in wages, or the comparison method. The same is true during pay equity maintenance when identifying, for example, changes to job content and job re-evaluation. The committee must therefore oversee the entire plan, not just one step. Because maintenance of pay equity is based on a process that involves one or more elements of the plan, as we point out in Chapter 13, the committee's mandate should also apply to that process.

It would, of course, be open to a pay equity committee to seek advice or information from a variety of sources including consultants or persons within the organization with particular expertise in such areas as job evaluation, compensation, communications or dispute resolution. Such assistance could be sought at any stage of the process.

8.4 **The Task Force recommends that the new federal pay equity legislation provide that the pay equity committee is mandated to develop the pay equity plan for the employees represented on the committee and to maintain the results of the plan's application.**

Representativeness of the Pay Equity Committee

Overlooked aspects of women's work must be considered.

As stated earlier, wage discrimination results from the lack of recognition of many aspects of women's work. This situation arises from deeply rooted stereotypes and prejudices regarding women's work, compounded by a power imbalance for female workers in the workplace. That has prevented them from gaining recognition for the many overlooked aspects of their jobs. To eradicate wage discrimination, the requirements of predominantly female jobs must be as clear as those of predominantly male jobs. This means these requirements must first be identified, and then their value recognized.

Owing to the imbalance of power for female workers, the undervaluing of women's work that arises from a lack of recognition based on stereotypes may resurface when adjustments are determined. In discussing the pay equity process, Morley Gunderson remarks that:

> The job analysis that goes into the job description tends to be done by supervisors, managers and job incumbents. Since supervisors tend to be male, the potential for gender stereotyping is present. [...] Occasional tasks such as heavy lifting may enter as essential functions in the male-dominated jobs, while occasional unpleasant tasks done in the female-dominated jobs may not enter as essential functions, especially if they are regarded as jobs typically done by women, perhaps as extensions of their work done in the household. Even the female job incumbents themselves may downplay such tasks.[4]

Gunderson continues by pointing out that even the presence of women on job evaluation committees is no sure guarantee of an equitable outcome:

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[4] Morley Gunderson. (1994). *Comparable worth and gender discrimination: An international perspective*. Geneva: International Labour Office, pp. 35-36.

> The committees themselves may have the same gender biases that typify the rest of society. Even when women are on the committees, there may be a selection bias in that they are more likely to be supervisory or senior employees, and they may have arrived at that position because they themselves were not subject to discrimination. As such, they may not perceive discrimination in other jobs.[5]

Examples of overlooked criteria.

In San José, California, librarians, a predominantly female group, asked to have "stress" included among the criteria used in a job evaluation system. This was opposed by the consultants overseeing the process on the ground that stress was an ambiguous characteristic and difficult to interpret. There was no mechanism available to the librarians through which this issue could be resolved, and they were forced to withdraw their request.[6]

In another case, a task force on pay equity in the Oregon state public service recommended that interpersonal relations skills be given more weight in the evaluation of jobs. The consultant involved agreed to increase the weight of this factor, but also redefined it so none of the jobs examined could receive the maximum rating. Again, the affected employees had no means of ensuring that their interests were protected.

Using technicalities.

In other cases, the conflict between the interests of the stakeholders may become apparent at the stage of recognizing the value of female jobs in terms of wages. In discussing pay equity implementation by local governments in Minnesota, Gunderson observes that:

> The job evaluation and other implementation decisions were often in the hands of local managers. Technical expertise was often absent, and mistrust was common. Local managers did not usually fully appreciate the importance of the policy and resisted its implementation as being imposed "from above". Since they largely controlled the implementation process, they also had the technocratic means to manage the change, which usually meant minimizing the change. When change occurred it often became a

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[5] Ibid., p. 36.

[6] Linda M. Blum. (1991). *Between Feminism and Labor: The Significance of the Comparable Worth Movement.* University of California Press. p. 81.

> restructuring of the whole compensation process so that other groups also gained at the expense of a lack of focus on female-dominated jobs.[7]

Gunderson cites the work of Orazem and Mattila (1990), in describing similar pressure tactics in Iowa, where

> other groups became involved in the process to protect or further their own interests. Specifically, when the comparable worth steps were originally applied, they would have increased the overall ratio of female-to-male earnings from 0.78 to 0.88, thereby closing 44 per cent of the overall gap. However, this would have led to pay cuts for professionals and union members. These groups were able to bring pressure to amend the plan so that their potential losses were converted to gains, which came at the expense of reduced gains for women [...]. [...] In other words, the amendments led to a final earnings ratio of 0.83 rather than the 0.88 that would have resulted if there had been no amendments [...].[8]

Women must be fairly represented on the pay equity committee.

To correct the recognized imbalance of power and eliminate gender bias from the process as much as possible, it is imperative that female workers be fairly represented on the pay equity committee. As stated by an expert in the field of equity policy implementation for organizations:

> In a workplace imbued with systemic discrimination, in which men hold the balance of power and privilege—which is why pay equity is needed—male control of pay equity implementation might be expected to result in a perpetuation of the status quo. This result could occur through an ostensibly democratic process of employee participation, unless women employees hold the balance of power, or at least have substantial influence, on such committees.
>
> Carol Agocs. (2003). *Involvement of Workplace Partners in Pay Equity Implementation and Maintenance.* Unpublished research paper commissioned by the Pay Equity Task Force, p. 12.

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[7] Morley Gunderson, *supra,* note 4, p. 75-76.

[8] Ibid, p. 76.

Female committee members must represent the jobs being analyzed.

Since the gender bias that must be eliminated concerns predominantly female jobs, the female workers that sit on the committee should primarily represent these jobs.

Section 17 of the *Pay Equity Act*[9] in Quebec specifies how the committee should be structured:

> 17. A pay equity committee shall be composed of not less than three members.
>
> Not less than two thirds of the members of the pay equity committee shall represent the employees. Not less than half of the members representing the employees must be women.
>
> The other members of the committee shall represent and be designated by the employer.

Again, we believe it is important to stress that the issues of pay equity are mainly centered on female workers, through predominantly female jobs. Pay equity seeks precisely to do justice to these jobs. Hence, in our opinion, it would be more appropriate for the pay equity committee to focus specifically on these jobs. To ensure a significant contribution of these female workers, they should not be represented in minority on the committee. We therefore recommend the following:

8.5 The Task Force recommends that the new federal pay equity legislation provide that at least half the employee representatives on the pay equity committee should be female workers from predominantly female job classes.

Visible minorities, Aboriginals and persons with disabilities.

Particular importance should also be given to representation of female workers who belong to a designated group—visible minorities, Aboriginal people, and persons with disabilities—when they are highly represented within a job class in an organization. In Chapter 1, we saw how these women are at double jeopardy in terms of wages, due in part to the stereotypes and prejudices that tend to devalue their work and to their relative lack of bargaining power in organizations. Their participation in the committee's work, where relevant, will allow for more consideration to be given to the requirements of the job classes in which they are overrepresented. Chapter 9 discusses issues related to gender predominance in greater depth.

Since the pay equity process is based on comparisons, representatives for predominantly male jobs must be involved for the purpose of coherence and fairness. Representation of male predominant job classes also ensures that male employees are integral participants in the pay equity process, and that the educational aspects of the committee process are part of their experience. In fact, the goal is to ensure that predominantly female jobs are treated in the same way as predominantly male jobs. Which gender predominant job classes, then, should be selected to participate in the pay equity committee? If the committee is intended to be as representative of the workplace as possible, an appropriate rule would be to prioritize the gender predominant job classes with the greatest number of incumbents.

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[9] Quebec, *supra*, note 2.

Employee participation on the pay equity committee is based on the representation criteria of various jobs with gender predominance. It is therefore necessary to get representatives from the largest possible range of jobs. Thus, there should be more employee than employer representatives on the committee.[10] This does not mean that the decision making will be done on the basis of individual votes and that the weight of numbers will always favour the employees. We examine this issue later on.

Remember that the pay equity process does not take place in the same context as that of negotiations for a collective agreement. As stated earlier, during discussions with the Task Force, numerous stakeholders stressed the importance of steering away from a process modeled on collective bargaining. The pay equity dynamic is completely different: the objective is to work together to best meet legal requirements.

8.6 The Task Force recommends that the new federal pay equity legislation provide that employee representatives must make up at least two thirds of the pay equity committee membership.

Committee size depends on a number of factors.

The size of the committee will depend in particular on the number of represented certification units, the number of job classes included in the plan and how diverse they are, and the need to keep the participants' workload reasonable. For example, there may be three members in a small organization and as many as 10 or 12 in a large organization with several bargaining units and non-unionized employees. If necessary, members can form sub-committees, each of which would handle certain aspects of the process. That would depend on the needs of each organization. However, even if some work is done by sub-committees, their results would have to be approved by all members of the pay equity committee. To reduce conflict, the legislation should stipulate minimum and maximum committee membership and respective representation for employee groups. Prorated representation based on the number of members would be advisable.

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[10] In the case of a committee composed of three members, two would be employee representatives.

The manner in which employee representatives are designated must aim to provide all employees with the same rights, regardless of their status. Thus, representatives should be chosen in a way that allows them to properly defend the interests of the employees they represent. Representatives for unionized employees will be designated by their union. To ensure the objectiveness of the process and to avoid any appearance of conflict of interest, representatives for non-unionized employees should be designated by non-unionized employees rather than by the employer. The actual methods of selecting representatives could vary based on organization size and resources. The employer should be obligated to inform non-unionized employees that they must designate their representatives and provide them with the means to do so. To ensure an impartial process, employees should choose their representatives by secret ballot. The more open the process, the greater the faith that non-unionized employees will have in their representatives.

8.7 The Task Force recommends that the new federal pay equity legislation provide that:

- **unions designate their representatives on the pay equity committee; and**
- **non-unionized employees elect their representatives on the pay equity committee by secret ballot and the employer is obligated to provide them with the means to do so.**

Authority of the Pay Equity Committee

Pay equity committee has decision-making authority.

The mandate of the pay equity committee implies that it also has decision-making authority with respect to the content of the pay equity plan. In fact, the reasons for creating the committee—greater guarantee of non-discrimination, knowledge of jobs, rebalancing of bargaining power—also support the argument that it should be given decision-making authority.

If the committee only has consultative power, the recommendations it makes may in some cases be modified unilaterally by the employer. To allow for this possibility means opening the door to many conflicts when the committee's suggestions are not respected by the employer and possibly to complaints to the body responsible for the application of the legislation.

8.8 The Task Force recommends that the new federal pay equity legislation provide that the pay equity committee holds decision-making authority with respect to the content of the pay equity plan as well as the maintenance of results.

The legislation must set out rules governing decisions in cases of conflict. Ideally, decisions would be made by consensus among employer representatives and unionized employee representatives.

> The goal should be to have the parties agree to all aspects of the process:
>
> - Choice of information tool and process
> - Choice of job evaluation plan and process
> - Wage adjustment methodology and remedial approaches.
>
> Canadian Association of University Teachers (CAUT). Submission to the Pay Equity Task Force, November 2002, pp. 34-35.

Proactive legislation promotes cooperation.

One advantage of proactive legislation when it is working as intended is that it establishes a climate of cooperation. It must be clear, however, that where voting occurs, employer representatives as a group would have one vote and employee representatives, one vote. Obviously, disagreements could arise between employer representatives and employee representatives, between unionized and non-unionized employees, or among various union representatives.

Disputes between employer and employee representatives may be referred to the proposed Canadian Pay Equity Commission, described in Chapter 17. The proposed Commission should first attempt to bring the parties to an agreement through mediation. Where mediation fails, the proposed Commission should recommend a solution.

In Quebec, section 25 of the *Pay Equity Act* stipulates that where employee representatives disagree, the vote of the majority prevails. In the context of that statute, the rules of committee representation may result in most seats being given to the representatives of the largest union or to non-unionized employees if they outnumber unionized employees in the organization. This may lead to a situation where the interests of a smaller unit or group are ignored. Quebec's legislation also provides under section 25 that where there is no majority among employee representatives, the employer representatives have the final say with respect to the matter at issue.

Both these solutions may contravene the legislation's objectives. The reason for having the various unionized and non-unionized employees participate is to give equal consideration to their pay equity issues and problems. For these reasons, however, we think that, if there is no possibility of reaching a consensus, either among the employee groups or between the employee and employer representatives, the assistance of the proposed Canadian Pay Equity Commission should be sought to achieve a resolution. This does not mean that individual employees are left without recourse if they have concerns about the way in which they are being represented or question the integrity of the process. Individual employees must also be able, at any stage, to raise a complaint of coercion or retaliation.

In Chapter 17, we are recommending that both employer and employee representatives be required to participate in the pay equity process in good faith and without discrimination. We also recommend that employee representatives be obligated to represent employees fairly, conscientiously and without discrimination. Individual employees or members of minority groups could have recourse to the oversight agencies described in Chapter 17 to challenge the process in relation to these criteria.

8.9 **The Task Force recommends that the new federal pay equity legislation provide that where employer and employee representatives on the pay equity committee disagree, the dispute is submitted to the proposed Canadian Pay Equity Commission, described in Chapter 17. The proposed Commission must assist the parties to resolve the dispute, failing which the Commission makes a decision.**

8.10 **The Task Force recommends that the new federal pay equity legislation provide that where employee representatives on the pay equity committee disagree, the dispute is submitted to the proposed Canadian Pay Equity Commission, described in Chapter 17. The proposed Commission must assist the parties to resolve the dispute, failing which the Commission makes a decision.**

Postings

Employees must be informed to understand process.

Employees should be informed of the pay equity process, its content and its results. This information is necessary for them to understand the process for determining salary adjustments and for them to take any available recourse if they believe their rights have been infringed. To that end, the information must be communicated automatically to all the employees represented on the committee, rather than waiting for employees to request it, which may deter some employees from obtaining the necessary information. The Ontario and Quebec legislation sets out a posting process for elements we consider relevant in the context of federal legislation. The entire process, including the actions taken to implement and maintain the plan, should be communicated to employees through postings as new information becomes available.

Posting Stages of the Pay Equity Process

1. **Establishing the pay equity committee**

   Postings should include:

   - process used for establishing the pay equity committee and its membership
   - employees rights and available recourses

2. **Developing the pay equity plan**

   The results of the deliberations of the committee with respect to the plan must be posted at the second, third and fifth steps, and postings would include the following information:

   - criteria used (e.g., whether gender predominance was determined by the percentage of gender representation, historical incumbency or stereotypes)
   - methods and tools selected as well as their description (e.g., the evaluation method, factors and subfactors, the evaluation questionnaire)
   - job evaluation methodology
   - wage comparison methodology
   - wage gaps, necessary adjustments and terms of payment.

3. **Maintaining the plan**

   Any amendment to the plan as a result of organizational or other changes.

Based on the five-stage process outlined in Chapter 7, we are recommending that posting be required after stage two (the development of methods, tools and processes), stage three (the evaluation of the jobs selected for comparison) and stage five (the determination of the system of wage adjustment).

At any stage, all notices, rulings or decisions by the proposed Canadian Pay Equity Commission or Canadian Pay Equity Hearings Tribunal, described in Chapter 17, should be posted. Posting obligations must be well defined by the proposed Canadian Pay Equity Commission using standard forms available to employers. This does not mean employers must post the individual wages of every employee concerned, but rather the salary adjustments for predominantly female job classes. The wages of individual employees will be available to members of the pay equity committee to allow them to conduct their work, subject to confidentiality.

8.11 **The Task Force recommends that the new federal pay equity legislation provide that the employer must post any document, notice or decision by the proposed Canadian Pay Equity Commission or the proposed Canadian Pay Equity Hearings Tribunal, described in Chapter 17, by using any means necessary to ensure that all employees can effectively access this information.**

Posting required at three critical stages.

The objective of the posting is to help employees understand the process so they can assess its compliance with legal requirements and defend their rights if they think these have been infringed. A procedure must therefore be established to allow them to request clarification regarding the posting's content or to request modifications to certain elements of the plan. Employees should be able to request these changes before the implementation process is complete, otherwise the progress of activities may be compromised. In fact, suppose that employees requested modifications to the evaluation method, claiming that certain aspects are discriminatory, and the committee deemed the request to be justified; if the job categories have already been evaluated and the salary adjustments calculated, the whole evaluation process would have to be redone, along with additional delays and costs. It would thus be best to require a posting at the three critical stages we have mentioned—following the development of methods, tools and processes, following the evaluation of the jobs selected for comparison, and again following the determination of the system for calculating wage adjustments.

Careful thought should be given to the communication strategy to be used in formulating the documentation for posting. It is important that the process be transparent, and that employees be provided with sufficient information, which will allow them to understand what is going to happen and how it may effect them. In order to build confidence, a well-designed communication strategy also needs to address how best to manage expectations, deal with negative reactions and allay any fears associated with the job evaluation process and possible wage adjustments.

Each of these three postings should be followed by a period during which employees can make their comments to the pay equity committee. The committee would then be given a certain timeframe to respond through a new posting. The respective durations for these two periods could be eight weeks for employees to understand the content of the posting and assess its compliance with the legislation and a shorter period of four weeks for committee members to examine requests in relation to a plan they themselves developed. As at other stages of the process, employees may file a complaint with the proposed Canadian Pay Equity Commission on the grounds set out in Chapter 17, or because they allege that they have been subject to retaliation.

Postings must be easily accessible.

For employee rights to have any real scope, employees must be able to access the postings easily. That is why a number of organizations in Quebec posted the results of each stage of the process on their intranet site, in addition to posting it on bulletin boards. They also made sure the language used in the documents could be understood by all employees, avoiding technical or highly specialized terms as much as possible. Employers might also be encouraged to post material in more than one language, where this is warranted in light of the diversity of the workforce. In our view, these are best practices that foster a transparent process and compliance with the legislation's objective. Posting adequate information at each stage of the pay equity process, whatever the practical means selected, is one way to broaden employee participation.

8.12 The Task Force recommends that the new federal pay equity legislation provide that:

- **after the second, third and fifth steps, the employer must post the results of the deliberations of the pay equity committee in a format consistent with guidelines issued by the proposed Canadian Pay Equity Commission, described in Chapter 17;**
- **employees affected by the plan be allowed eight weeks after each posting to make comments and request modifications. The pay equity committee will have four weeks to respond with a new posting including, where applicable, the modified plan; and**

- **employees may appeal decisions made by the committee by filing a complaint with the proposed Canadian Pay Equity Commission at any stage of the process, based on the grounds set out in Chapter 17, or on retaliatory action taken against them.**

Recommendation 8.12

Dissenting recommendation by Professor Marie-Thérèse Chicha, Member, Pay Equity Task Force.

Recommendation 8.12, bullet 3, essentially limits the permissible grounds for employee complaints to bad faith on the part of pay equity committee members or to reprisals against an employee. However, as the pay equity committee conducts its work, it may happen that an employee thinks his/her right to pay equity has been infringed, for instance because the members are using inadequate methods or tools (even if in good faith), or because of some similar reason. Suppose that the employee has provided comments to the committee members in response to a posting, but the committee members have not changed their decision or offered convincing explanations. In such cases, it is essential that the employee be able to file a complaint with the oversight agency.

One might think that a very substantial number of complaints could be filed with the oversight agencies as a result of this recommendation. I do not think so, since we have made very extensive recommendations in our Report regarding the role of the oversight agencies with respect to education, training, information and employer obligations. Consequently, if these recommendations are followed, I believe that there will be an adequate level of compliance with the legislation in the majority of cases.

This does not preclude the fact that in some establishments, certain elements of a pay equity plan can have a negative impact on the employee's right to pay equity. It is essential to provide these employees with accessible recourse, and not subject them to the high standard of determining whether or not there was an act of bad faith on the part of one or more members of the pay equity committee.

Furthermore, one must recognize that a pay equity committee—being both judge and interested party—may find itself in a conflict of interest situation when an employee requests changes to a pay equity plan.

It is therefore critical that employees be able to file their complaints with an independent body such as the oversight agencies proposed in our Report. These agencies must issue clear guidelines explaining the process for filing complaints.

This is why I recommend that bullet three of Recommendation 8.12 be replaced by the following:

➤ **employees who are dissatisfied with the response of the pay equity committee have the right to file a complaint with the proposed Canadian Pay Equity Commission at every step of the process.**

Once the information is posted and the plan modified, where applicable, the employer must send the postings to the proposed Canadian Pay Equity Commission that can thus verify that employers have respected the legislation's deadlines. It may also choose to examine a number of these reports to assess their compliance. This selection may be random or based on certain factors or complaints that suggest an employer is contravening the Act. Postings sent to the proposed Commission may also serve to establish a picture of the legislation's application and to identify sectors experiencing problems with its application, and in need of assistance by the proposed Commission to assist these sectors.

8.13 The Task Force recommends that the new federal pay equity legislation provide that an employer must send copies of all postings, as posted, to the proposed Canadian Pay Equity Commission, described in Chapter 17.

Employee Rights with Respect to Participation

The Right to Protection Against Retaliation

Protection from reprisals.

If employees are to participate freely in developing the pay equity plan, present their comments, request revisions or possibly file a complaint with the proposed Canadian Pay Equity Commission, they must not feel threatened by the possibility of retaliatory measures taken against them. That is why proactive legislation usually includes provisions protecting employees from retaliation and we will be recommending the inclusion of such provisions in proactive pay equity legislation in Chapter 14.

The Right to Paid Time

Time for committee work and training must be paid.

To ensure that members of the pay equity committee will devote sufficient time to committee work without being penalized, the employer must encourage their participation by compensating employee representatives for time spent on preparing committee work and attending meetings. This also applies to training.

> To ensure its success, employee participation in a committee, as well as any education or training in the workplace relating to pay equity, must be paid time.
>
> Public Service Alliance of Canada (PSAC). Final submission to the Pay Equity Task Force, November 2002, p. 8.

8.14 The Task Force recommends that the new federal pay equity legislation provide that the time employees spend on pay equity committee work and on other activities needed to achieve pay equity is considered work time and thus be paid accordingly.

To avoid indirectly excluding persons with family obligations, particularly women, committee meetings should be held during work hours, as much as possible.

The Right to Training

All committee members must have prior training.

Earlier in this chapter, we stated that one reason for creating a pay equity committee is to ensure that both the process and the results are fair and effective. In order to achieve these objectives, it is essential that all committee members, both employer and employee representatives, have the knowledge and skills necessary to participate fully and constructively in the process. Members will only be able to fulfill their duties properly if they are given prior training.

> Plan development needs [to] be included as an educational component, so that managers and employees understand why the exercise is being conducted. It should also include training in pay equity principles.
>
> Ontario Federation of Labour, submission to the Pay Equity Task Force, June 2002, p. 11.

Stakeholders who have participated in the pay equity process emphasize the importance of training. The training given to members of the pay equity committee must, of course, provide a firm background regarding requirements under the legislation, and technical processes which are part of the pay equity analysis.

> [TRANSLATION] Pay equity is a complex issue that requires specialized training, in terms of the basic concepts and the entire pay equity process, as well as maintenance of pay equity once it is achieved.
>
> Fédération des travailleurs et des travailleuses du Québec (FTQ). Summary of comments submitted to the Pay Equity Task Force, April 2002, p. 9.

Training needed on collaborative decision making.

In addition, training should foster awareness of committee members as to human rights and discrimination issues. It should also provide them with the tools necessary to participate effectively in collaborative decision-making, and to resolve contentious issues in a constructive manner.

In order that the work of the pay equity committee is compliant with the legislation, it is the employer's responsibility to ensure that committee members acquire the training and skills needed to perform the duties required in an informative and productive manner. Without such training, the capacity of employee representatives to make a constructive contribution may be limited as they may be highly influenced by human resource specialists sitting on the committee, or by outside consultants.

We have spoken here of the training needs of members of the pay equity committee representing both employer and employees. The members of the committee require specialized information and skills in order to carry out their important role in relation to the formulation and maintenance of the pay equity plan. It is necessary as well, however, to ensure that all employees and managers have training opportunities which will allow them to understand the pay equity process and its implications for them and the organization. This more general training, in the concepts of pay equity and the process in place for achieving it, helps to foster a climate in which human rights are better understood and supported; generates a widespread sense of ownership of the goals and the process; and builds a pool of informed employees and managers who may be suitable candidates for future membership on the pay equity committee.

8.15 The Task Force recommends that the new federal pay equity legislation require the employer to provide members of the pay equity committee with the necessary training to establish a pay equity plan and to maintain its results. The training should also allow committee members to develop both technical skills and the ability to identify and eliminate discrimination. The employer should also provide information and facilitate training to permit all managers and employees to understand the pay equity process and the pay equity plan.

Educational mandate.

In Chapter 17, we suggest that the proposed Canadian Pay Equity Commission should have a broad mandate with respect to educational activities. It would be appropriate, in our view, if the proposed Commission, in addition to circulating manuals, materials and checklists for the use of pay equity committees, developed training programs for members of those committees. This would provide one means of ensuring that the training received by employer and employee representatives is relevant and of high quality.

> Employees, unions as well as employers, require informed guidance on all the aspects of pay equity (and equal pay) implementation in order to make non-discriminatory decisions throughout the pay equity process. This must be facilitated by the Commission who has the responsibility for enforcement and oversight.
>
> Canadian Association of University Teachers (CAUT). Submission to the Pay Equity Task Force, November 2002, p. 26.

Public funding may be required.

Numerous stakeholders have also stressed the need for public funding of this training or for other government financial support. In fact, we believe this would motivate organizations to adopt effective training programs, and allow them to reduce their financial burden.

> Education, information and training should be funded for employers, unions and employees in the development and implementation of pay equity plans.
>
> Ontario Federation of Labour. Submission to the Pay Equity Task Force with respect to a review of Section 11 of the *Canadian Human Rights Act* and the *Equal Wages Guidelines, 1986,* June 2002, p. 15.

The Right to Information

Committee members must have access to relevant information.

The mandate of pay equity committee members requires that they be given the necessary data to achieve that mandate in a manner consistent with the legislation's objective. This information concerns not only the requirements of gender predominant jobs, but also their respective remuneration, including base pay, flexible pay and benefits with pecuniary value. If committee members do not have valid information regarding the elements needed to develop an effective pay equity plan, they cannot be certain they have really eliminated wage discrimination.

> Employees and unions must have full access to all pay equity relevant information. Information in the hands of the employers, including information about the employer's compensation system, about the composition, duties, and evaluation of jobs and about the selection and design of gender neutral comparison systems must be shared.
>
> Canadian Labour Congress (CLC). Final Submission to the Pay Equity Task Force, November 2002, p. 4.

Access to information is also required for committee work to progress smoothly and harmoniously. Concrete experiences in Ontario and Quebec have shown the pay equity process to be more effective and timely when the committee has all the information it needs and is not forced to negotiate obtaining that information piecemeal. In such a case, a climate of mistrust is created and goes on to pervade all committee work.

Obligation of confidentiality.

To guarantee to the employer that pay information will not be used for any other purpose, the legislation will have to provide that committee members be obligated to maintain confidentiality. Thus, section 29 of the Quebec *Pay Equity Act* stipulates as follows:

> Disclosure of Information.
>
> 29. The employer is bound to disclose to the members of the pay equity committee the information necessary to establish the pay equity plan. The employer shall also facilitate the collection of the necessary data.
>
> Confidentiality.
>
> The members of the pay equity committee are bound to protect the confidentiality of any information and data obtained.[11]

8.16 **The Task Force recommends that the new federal pay equity legislation indicate that the employer must provide committee members with the information required to establish a pay equity plan and to maintain pay equity results. It must also facilitate the collection of data necessary for the committee's work. In return, committee members will be obligated to maintain the confidentiality of such information with sanctions for breach of confidentiality to be determined by the oversight described in Chapter 17.**

Conclusion

This chapter presented the rationale and the important elements of employee participation in the pay equity implementation process. The various experiences examined in this respect illustrate the benefits of employee participation both in terms of achieving the legislation's objective and of ensuring an effective implementation process. The recommendations presented in this chapter are consistent with that dual perspective.

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[11] Quebec, *supra*, note 2.

Chapter 9 – Predominance in Job Classes

Pay equity focuses on job characteristics.

The first step of a pay equity plan is to select the jobs that will be evaluated and compared, that is, women's and men's jobs in the organization. The entire implementation process for pay equity is based on the characteristics of the job, not on the individuals in the jobs. That is what differentiates the principle of equal pay for work of equal value from that of equal pay for equal work. In the latter case, it is neither necessary to demonstrate predominance nor to evaluate the jobs since pay disparity results from discrimination between two persons performing the same work.

Identifying job classes and determining gender predominance.

The selection of jobs to be compared can be broken down into two steps. First, the job classes—single jobs or groupings of jobs which are to be compared as part of the pay equity analysis—must be identified. Second, predominance must be determined for each of these job classes.

In this chapter, we begin by examining the issue of criteria for identifying the job class and predominance indicators, for which we will take into account both indicators pertaining to gender and those pertaining to other socio-demographic characteristics. As indicated in other chapters, the main concern underlying our overall analysis is to determine and recommend definition criteria and application methods that are free of gender-based discrimination.

Job Classes

Legislation must include specific criteria for defining "job."

The pay equity implementation process must be applied rigorously if meaningful, discrimination-free results are to be achieved. The clearer and more rigorous the process, the easier it is to detect and eliminate discriminatory aspects. It begins with the definition of what a "job" is, the positions it includes, and its scope. This definition requires an initial classification of positions or jobs using criteria that ensure a certain degree of homogeneity. The titles or classifications in effect in a business, whether determined under collective agreements or not, are not necessarily appropriate indicators of which jobs should be grouped together for the purposes of pay equity. They may, in fact, be too broad and include a variety of tasks or be based on fairly vague criteria that vary from one job to the next. Moreover, classification methods differ from business to business and titles are far from homogeneous. Hence, there is a need for specific criteria in the legislation to define the job classes which will provide the basis for analysis during the formulation of the pay equity plan.

Broad definitions of job classes may contribute to pay inequities.

The implications of the definition of job class are significant, as John Kervin[1] points out. After examining the results of simulations of a number of options pertaining to the scope of job classes, this researcher found in particular that a very broad measurement will have the effect of combining female-dominated jobs with male-dominated jobs and will result, ultimately, in smaller wage gaps.

Definitions and Classification Criteria for Jobs in Canadian Jurisdictions

CHRA and *Equal Wages Guidelines, 1986* do not fully define job classes.

At the federal level, the *Canadian Human Rights Act* (CHRA) does not set out criteria for delineating job classes for use in pay equity comparisons and the *Equal Wages Guidelines, 1986* refers to *occupational groups* without indicating definition criteria. However, a Canadian Human Rights Commission (CHRC) information document—*Implementing Pay Equity in the Federal Jurisdiction*[2]—includes a number of criteria for determining an occupational group.

Several criteria may be used in determining what constitutes an occupational group:

- jobs grouped together are characterized by similar work;
- they probably have the same basic qualifications;
- they are characterized by similar career patterns and interchangeability of personnel; and
- they may already be grouped together for administrative purposes, have similar wage scales and have common representation in bargaining.

Various stakeholders who appeared before the Task Force were critical of the lack of a definition in the CHRA regarding occupational group. Many stressed the importance of having clear guidelines to determine an occupational group and emphasized the need for clarity in defining job classes.

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[1] John Kervin. (2002). *Measures of Job Gender.* Unpublished research paper commissioned by the Pay Equity Task Force, p. 24.

[2] Canadian Human Rights Commission (CHRC). (1992). *Implementing Pay Equity in the Federal Jurisdiction.* Ottawa: Canadian Human Rights Commission, pp. 6-7. Accessible on CHRC website: http://www.chrc-ccdp.ca.

> There has also been confusion over the phrase "occupational groups," which is the category for analysis in comparing wages according to the *Equal Wage Guidelines.*
>
> National Association of Women and the Law (NAWL). Brief presented to the Pay Equity Task Force, December 2002, p. 19.

Generally, the Canadian Labour Congress specifies that:

> Occupational group or job class should not be rigidly defined, but common characteristics of the work should be examined by the parties with a view to making reasonable choices in light of the purpose of the legislation.
>
> Canadian Labour Congress (CLC). Final submission to the Pay Equity Task Force, November 2002, p. 8.

Manitoba, PEI and Ontario definitions of unit of analysis.

In contrast to the federal pay equity legislation, which does not define occupational group, proactive legislation usually includes provisions which clarify elements that are used to identify and group jobs. Manitoba's *Pay Equity Act* stipulates that the job class which will be used for comparison is the *class of positions* defined on the basis of three criteria:

> 1. [...]
>
> "class" or "class of positions" means a group of positions involving duties and responsibilities so similar that the same or like qualifications may reasonably be required for, and the same schedule or grade of pay can be reasonably applied to, all positions in the group[3]

Under Prince Edward Island's legislation,[4] "class" is defined in terms of the same three criteria: similar duties, comparable qualifications and application of the same pay grade or schedule.

Ontario's *Pay Equity Act* adds a fourth criterion—recruiting methods:

> 1.(1) "job class" means those positions in an establishment that have similar duties and responsibilities and require similar qualifications,

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[3] Manitoba. *Pay Equity Act.* S.M. 1985-86, 21 C.C.S.M. P13.

[4] Prince Edward Island. *Pay Equity Act.* R.S.P.E.I. 1988, c. P-2.

> are filled by similar recruiting procedures and have the same compensation schedule, salary grade or range of salary rates[5]

Based on Ontario's experience and the limited scope of the criterion "similar recruiting procedures," Quebec's *Pay Equity Act* includes only three criteria as set out in section 54, paragraph 1:

Quebec definition of unit of analysis.

> 54. For the purpose of identifying predominantly female job classes and predominantly male job classes, positions held by employees which have the following common characteristics shall be grouped together:
>
> 1) similar duties or responsibilities;
>
> 2) similar required qualifications;
>
> 3) the same remuneration, that is, the same rate or scale of compensation.[6]

As seen above, these examples of proactive legislation use the expression "job class," which groups jobs according to three or four criteria, all of which must be respected. The expression "job class" was chosen to avoid any confusion with expressions that are used in the workplace and that have very changeable content, such as "position," "occupation," "title," "duty," "job family," "job classification," and "salary class."

Homogeneity of Job Classes

Skill, effort, responsibility and working conditions.

The objective of the criteria used under proactive legislation to analyse the specific features of jobs is to define the job class rigorously to ensure consistency of the pay equity plan and to avoid arbitrary effects on predominance. The most common evaluation criteria are skill, effort, responsibility and working conditions.

To ensure a more rigorous evaluation, proactive legislation requires job classes to be defined homogeneously with regard to the two most heavily weighted factors in the evaluation systems: qualifications and responsibilities. The following example illustrates the importance of this homogeneity. Suppose that a company designates as "programmer" all employees who perform this type of work, although some perform that work at a highly complex level while others are assigned to relatively simple analyses. For the former, the employer requires that they have a university degree while the latter are only required to have a technical school diploma. If both types of programmers are grouped together in the same job class, this may lead to problems later when the qualifications for that job class are evaluated: will the job class be assigned the points for a university degree or for a technical school diploma? Assigning an average number between the two distinct levels of education will reflect neither the value of the more complex job nor that of the simpler job. More important still, this may well have a discriminatory impact on the results, particularly if one of the combined jobs is female-dominated and the other is male-dominated.

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[5] Ontario. *Pay Equity Act*. R.S.O. 1990, P. 7.

[6] Quebec. *Pay Equity Act*. R.S.Q. 1995, chap. E-12.001.

With regard to remuneration, the requirement for consistency is even easier to understand. The ultimate goal of the pay equity process is to compare the pay of female-dominated jobs to that of male-dominated jobs. If the job class includes a variety of pay rates that are not inter-related as they would be on a pay scale, a problem will arise when comparisons are made: which pay rate will be representative of this job? By the same token, if two jobs with access to different flexible pay schemes are grouped together, which remuneration will be used to compare this job class with others? As in the case above, such a combination may indeed have a discriminatory impact. As we will see later, since pay comparisons take into account flexible pay and benefits with monetary value. It is therefore essential to take these into consideration from the outset when defining the job class which will be the basis for analysis.

Impact of job class on predominance.

Determination of job class also has a material impact on predominance, as John Kervin demonstrates by comparing three situations:

- Imagine a job with 10 incumbents, seven of whom are male. The proportion female is 30 percent.
- This jobs falls into an occupational pay level with 100 incumbents, 50 of them male. The proportion female for the job is now 50 percent.
- This occupational pay level is part of an occupational group with 1000 incumbents, of which 250 are male. The job's proportion female now becomes 75 percent.[7]

Importance of identifying and establishing separate classes.

This example illustrates the impact of the definition of job classes and explains why the pay equity commissions in Ontario and Quebec recommend that where there is doubt about the similarity of two or more jobs, it is preferable to not group them together and to establish separate job classes.

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[7] John Kervin, *supra*, note 1, p. 8.

An example from the cases of Ontario's Pay Equity Hearings Tribunal illustrates this point well. The case involved female elementary school teachers,[8] and the dispute between the school board and the union representing the female teachers concerned the number of job classes. The school board maintained that all female teachers belonged to the same job class whereas the union contended they should be broken down into seven categories according to the level of qualification required. Predominance was based essentially on this issue since men were predominant in the highest-qualified and best-paid categories. The Tribunal ruled in favour of the union and allowed separate job classes, and explained its decision by stating that the additional qualifications constituted a necessary requirement for gaining access to higher-level positions.

Flexibility in Applying Criteria

It is not necessary to fully evaluate the qualifications and responsibilities or to calculate total remuneration precisely. The determination of job classes is simply a preliminary sorting based on relatively simple indicators such as level of education or access to a skills-based pay scheme.

Proposed Canadian Pay Equity Commission should adopt "similarity" concept.

The concept of similarity of duties, responsibilities and qualifications has been described in various guides[9] and the proposed Canadian Pay Equity Commission will be able to rework them, adapting them to the situations of organizations under federal jurisdiction by clearly illustrating their application. The term "similar" implies a certain flexibility, which would not have been implied had the term "identical" been used in the aforementioned legislation.

> There is a need to maintain flexibility so that the individualized ways in which workplaces are organized can be taken into account.
>
> Public Service Alliance of Canada (PSAC). Final submission to the Pay Equity Task Force, November 2002, p. 14.

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[8] *Re Wentworth County Board of Education, (1991)*, 2 P.E.R. 37.

[9] See for example the Canadian Human Rights Commission (http://www.chrc-ccdp.ca), Quebec's Commission de l'équité salariale (http://www.ces.gouv.qc.ca/fr/english/ english.asp) and Ontario's Pay Equity Commission (http://www.gov.on.ca/lab/pec/).

Additional criterion required.

Given the above analysis of the criteria for determining job classes, we recommend adding a fourth criterion to the three criteria commonly used in proactive legislation, that of similar access to total remuneration and benefits with monetary value. We make this recommendation for reasons of consistency with later stages of the pay equity plan in which remuneration includes both components, as well as the fact that flexible pay has become significant in a number of businesses. Here, by the same token, it is not a question of making elaborate calculations at the job class stage, but of ensuring that jobs with similar access to flexible pay and benefits are grouped together.

9.1 **The Task Force recommends that the new federal pay equity legislation include a provision which determines a job class by the following four criteria:**

- **similar duties or responsibilities;**
- **similar qualifications;**
- **the same rate of pay or the same pay scale; and**
- **similar access to total remuneration and benefits with monetary value.**

Size of Job Class

Minimum threshold requirement has undesirable effect.

Some pay equity legislation, such as that of Nova Scotia[10] and Manitoba[11], requires a minimum number of incumbents in a job class for it to be part of the pay equity plan. This minimum size is 10 employees. In Manitoba, smaller job classes can be included by agreement or regulation. This requirement has had undesirable effects, particularly that of excluding from pay equity plans male-dominated jobs that could be used as comparators.[12] These jobs are often considered more specialized and therefore have fewer incumbents. These negative effects are thus likely to unjustifiably limit pay comparisons, which is why we do not recommend a minimum size for job classes.

Grouping of Job Classes

Groups of job classes.

Once job classes have been determined based on the four criteria mentioned above, they can be brought together in a group of jobs for wage comparison purposes. This approach was adopted under Ontario's *Pay Equity Act*[13] for female-dominated categories. Subsection 6(9) of the Act outlines the procedure in such a case and subsection 6(10) defines "group of jobs":

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[10] Nova Scotia. *Pay Equity Act.* R.S.N.S. 1989, c. 337.

[11] Manitoba, *supra*, note 3.

[12] See *Pay Equity in the Manitoba Civil Service*, (1998), Winnipeg: Manitoba Civil Service Commission; and Susan Genge, (1994), *Pay Equity in Canada: What Works? Trade Union Pay Equity Practitioners Examine Their Experiences*, report prepared for Human Resources Development Canada and the Canadian Labour Congress Ad Hoc Pay Equity Committee.

Ontario's *Pay Equity Act*.

> 6.(9) Where a group of jobs is being treated as a female job class, the job rate of the individual job class within the group that has the greatest number of employees is the job rate for the group and the value of the work performed by that individual job class is the value of the work performed by the group.
>
> 6.(10) In this section, "group of jobs" means a series of job classes that bear a relationship to each other because of the nature of the work required to perform the work of each job class in the series and that are organized in successive levels.

Job classes must be grouped after evaluation to avoid bias.

At first glance, grouping together all the female-dominated job classes that belong to the same family may seem like an effective way to simplify the work of the pay equity committee. However, this grouping would not necessarily respect the principles of pay equity. Such an approach would entrench the existing hierarchy between female-dominated job classes without verifying whether it actually reflects the hierarchy that would result from an evaluation of the jobs. Consequently, the legislation should not allow the creation of job groups at this stage of the process when the committee has not yet evaluated each job class. On the other hand, once the evaluation is performed, job classes can be grouped based on the establishment of point intervals. This could actually simplify the pay comparison stage, provided the grouping is free of discrimination.

Predominance of Job Classes

Stereotyped jobs and occupational segregation.

An analysis of the labour market reveals that certain jobs have an image which automatically links them to a particular socio-demographic group, for example:

- secretaries: women;
- mechanics: men;
- garment industry seamstresses: women who belong to visible minorities;
- fast food service employees: youth.

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[13] Ontario, *supra*, note 5.

This image arises from the fact that traditionally, most of the workers in these occupations share a demographic trait both in the labour market generally and in a specific business. This contributes to "labelling" of jobs—women's jobs, men's jobs, and jobs held by visible minorities—and reflects the occupational segregation still common in the labour market.

Occupational segregation.

As indicated in Chapter 1, prejudices and stereotypes regarding women's work, unequal bargaining power and traditional management practices stem from this kind of occupational segregation and negatively affect value and pay for these jobs. This situation is well documented for women; however, the role of occupational segregation in wage discrimination against other groups is less documented in Canadian scientific research and case law.

Definition of Predominance and Predominance Criteria in Canadian Jurisdictions

Gender predominance.

Most of the legislative provisions pertaining to pay equity, particularly the proactive legislation, deal exclusively with gender predominance. At the federal level, section 13 of the *Equal Wages Guidelines, 1986* establish a sliding scale to determine predominance that varies based on the size of the group.

> 13. For the purpose of section 12, an occupational group is composed predominantly of one sex where the number of members of that sex constituted, for the year immediately preceding the day on which the complaint is filed, at least
>
> a. 70 percent of the occupational group, if the group has less than 100 members;
>
> b. 60 percent of the occupational group, if the group has from 100 to 500 members; and
>
> c. 55 percent of the occupational group, if the group has more than 500 members.[14]

Canadian pay equity legislation, particularly proactive legislation, has been directed at examining the position of women workers in jobs where women are predominant.

These thresholds present a deviation from the ordinary use of the term "majority" to mean 50 percent plus one. However, as the following excerpt makes clear, the Canadian Human Rights Commission wished to eliminate the effect of random chance:

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[14] Canada. *Equal Wages Guidelines, 1986*, SOR/86-1082.

> The second step then is to ensure that the make-up of the group was not due to random chance, and that you could rely on the conclusion that the group was indeed predominantly female, with some statistical certainty. And so the standard was chosen that is used in American case law, three standard deviations and therefore the percentage would vary with the size of the sample [...]. [...] The common denominator between 70% for a group of 100 or less and 60% for groups of 100 to 500 and 55% for more than 500 is that they all represent the same level of confidence, in statistical terms, that the composition of the group is predominantly of the sex that you have concluded that it is.[15]

Sliding scales may skew results.

These sliding scales of predominance based on the size of the job class may produce inconsistent results in certain cases, which was noted in some of the submissions to the Task Force.

> The current system of using a sliding scale to determine gender predominance in the current section 13 of the *Canadian Human Rights Act* has caused some problems worth addressing. [...]
>
> For example, where the federal government devolves portions of the public service to separate employers, Crown agencies or to the private sector, what was previously a large group, requiring 55% to determine gender predominance, may become a number of small groups. These groups may not meet the "new" 70% gender predominance requirement even though, as a result of the transfer, the actual incumbents and the work performed may not change.
>
> Public Service Alliance of Canada (PSAC). Final submission to the Pay Equity Task Force, November 2002, p. 14.

Quebec: grounds of discrimination other than gender.

In contrast to the federal approach, under section 19 of the *Charter of Human Rights and Freedoms*, Quebec explicitly takes into account discrimination on grounds other than gender and their impact. To give a practical scope to the prohibition of wage discrimination stipulated in section 19, including discrimination on grounds other than gender, as set out in section 10, in 1989 the Commission des droits de la personne et des droits de la jeunesse [Quebec human rights commission] adopted guidelines[16] with a wide range of indicators. So far these are the only indicators developed in Canada to identify both gender-based wage discrimination and wage discrimination on grounds other than gender.

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[15] Canadian Human Rights Commission. (1987). *Information Session on Pay Equity*, p. 34.

Quebec: gender predominance indicators.

The list below presents a number of indicators for gender predominance:

- Rate of representation of women or men (60%) in a job class;
- Historical gender-based incumbency in a job class;
- Occupational stereotypes;
- Disproportion between the rate of representation of women or men in a job class and their rate of representation in the employer's total workforce;
- Rate of representation of women or men in a sub-category of an official job class for a given employer;
- Rate of representation of other designated groups under section 10;
- Rate of representation of women who also meet another criterion under section 10.[17]

Quebec: Indicators for other grounds of discrimination.

Regarding predominance other than gender predominance, the guidelines set out by the Quebec human rights commission present a second series of indicators resembling the previous, except with respect to the first indicator—the threshold of 60 percent female or male representation—which is replaced with:

> [TRANSLATION]
>
> Disproportion between the rate of representation of a group in one job class and the rate of representation of that group in the labour force.[18]

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[16] M.-T. Chicha-Pontbriand. (1989; revised in 1998). *À travail égal, salaire égal sans discrimination : Lignes directrices pour la détermination du lien avec un des critères de discrimination de l'article 10 de la Charte*. Montreal.

[17] Section 10 of Quebec's *Charter of Human Rights and Freedoms* reads as follows: "Every person has a right to full and equal recognition and exercise of his human rights and freedoms, without distinction, exclusion or preference based on race, colour, sex, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap."

[18] M.-T. Chicha-Pontbriand, *supra*, note 16.

Indicators from other jurisdictions.

Some of these indicators are drawn from Ontario's proactive legislation while others were developed in the United States. The indicators are described briefly below.

Historical Incumbency

Historical incumbency: long time frame needed.

This indicator reflects changes over time in the rate of representation of men or women (or of members of any other designated group) under section 19 of Quebec's *Charter of Human Rights and Freedoms* in a job class for the period prior to the calculation of predominance. It is based on the fact that for various short-term reasons (retirement, termination of employment) the percentage of women or men (or members of a designated group) in a job may be temporarily low. To determine predominance with certainty, it is necessary to examine historical incumbency over many years.

Occupational Stereotypes

Occupational stereotypes.

An occupational stereotype is a common, widespread public image regarding the gender or ethnic identity of workers in a specific occupation. Certain occupations are automatically associated with one gender: for example, elementary school teachers or nurses are commonly thought of as women, while physicians or firefighters are generally thought of as men. This association is attributable to the fact that in society, primarily women are found in the first two professions and men in the latter two. It also arises because the first two occupations are perceived as calling upon feminine characteristics, such as care and attention to children, interpersonal relations skills, and similarity to homemaking activities. The other two occupations, on the other hand, focus on pure sciences or significant physical exertion skills perceived as more masculine. Occupational stereotypes are rooted in these associations, which are widely held by the public.

Disproportion Between the Rate of Representation of Women or Men in a Job Class and Their Rate of Representation in the Employer's Total Workforce

Disproportionate representation in one job class.

This indicator may be relevant when, for example, only 8 percent of a company's employees are women, but women make up 45 percent of the employees in one job class. In such circumstances, the pay equity committee may consider that job class to be predominantly female.

Conversely, in female-dominated workplaces, there may be an occupation in which men represent 45 percent of employees. In this case, the pay equity committee would have the liberty to consider this job as male-dominated. This would also be a solution in certain female-dominated sectors such as social services, where no male comparators might exist without such an indicator.

Intra-Occupational Segregation and Rate of Representation of Women or Men in a Sub-Category of a Job Class

Existing or emerging female sub-categories in predominantly male job classes.

This indicator refers to the concept of micro-segregation, or feminized sub-categories within predominantly male job classes. Thus, some traditionally male professions like law, medicine, veterinary medicine and pharmacology are becoming predominantly female. However, women are not equally represented among the various specializations. In medicine, more women are found in family medicine, pediatrics and obstetrics/gynecology; in law, many women work in family law, but few in criminal and commercial law; in management positions, women work mainly in human resources but rarely in marketing or production. This indicator is necessary because the concept of job class is not defined in Quebec's *Charter of Human Rights and Freedoms*. However, under proactive legislation, these distinctions can be taken into account when determining job classes.

Quebec's *Charter of Human Rights and Freedoms* – Rate of Representation of Other Groups Under Section 10

Women in combination with other disadvantaged groups.

This indicator refers to a situation where relatively few women are represented in a job class (for example, 45%) concurrently with a concentration (for example, 20%) of male workers who are members of visible minorities, Aboriginal people or persons with disabilities. This is an indication that the job has a concentration of workers belonging to groups discriminated against in the labour market. Consequently, if an employee who works in this type of job class files a wage discrimination complaint with the Quebec's human rights commission, the job may be considered female-dominated, even if women represent less than 60 percent of all employees in that job class.

Rate of Representation of Women Who Also Meet Other Discrimination Criteria

Double jeopardy.

This indicator takes into account the fact that, for many years, women workers who are members of a visible minority, Aboriginal people or persons with disabilities have been found to be at double jeopardy in terms of wages compared with both the men in their group and other female workers.[19] Its interpretation is as follows: if women represent 45 percent (for example) of all employees in a job class, but a number of these female workers are members of a visible minority, wage discrimination is highly likely. Accordingly, a female complainant from this type of job class could claim the job class is female-dominated and must therefore be compared to male-dominated categories in the company.

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[19] See Chapter 1.

Disproportion Between the Rate of Representation of a Group in One Job Class and the Rate of Representation of That Group in the Labour Force

Disproportionate representation.

This indicator may be used in place of the 60 percent threshold; that may be a useful guide in the case of women, who represent about 45 percent of the labour force, but it is not a workable criterion for other groups who are a smaller minority in the labour market. The indicator was chosen because stereotypes and prejudices, and possibly the devaluation of that occupation, stem from a group's disproportionate representation in a given occupation versus its representation in the general population.

Based on this indicator, under section 19 of the Quebec's *Charter of Human Rights and Freedoms*, a complainant could allege that he or she is subjected to wage discrimination because, among other reasons, he or she is employed in a job class in which members of visible minorities represent a significant percentage of workers, for example, 40 percent. Of course, predominance according to this indicator is only one element of proof of wage discrimination, since it must also be shown that the job is of equal value and that an unfavourable wage gap exists. But in allowing such an indicator, a complaint cannot be deemed inadmissible because a group is poorly represented in that occupation.

Thresholds in various jurisdictions.

A gradual evolution can be observed in proactive legislation. Manitoba's[20] proactive legislation includes only statistical indicators of predominance and stipulates a threshold of 70 percent of women or men in a job class. The pay equity legislation in Prince Edward Island[21] and Nova Scotia[22] includes a lower statistical threshold: 60 percent for women or men. In New Brunswick, the threshold is differentiated: 60 percent for female-dominated job classes and 70 percent for male-dominated job classes. Note that most of this legislation stipulates that the employer and the bargaining agent may use other qualitative criteria, by occasionally giving examples.

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[20] Manitoba, *supra*, note 3.

[21] Prince Edward Island, *supra*, note 4.

[22] Nova Scotia, *supra*, note 10.

Ontario's *Pay Equity Act* also has differentiated statistical thresholds: 60 percent for female-dominated job classes and 70 percent for male-dominated job classes. However, two other indicators are added explicitly:

> 1.(5) In deciding or agreeing whether a job class is a female job class or a male job class, regard shall be had to the historical incumbency of the job class, gender stereotypes of fields of work and such other criteria as may be prescribed by the regulations.[23]

Quebec's proactive legislation[24]—which, like other proactive legislation, aims only to correct wage discrimination based on gender[25]—lays down four criteria:

Quebec: threshold criteria.

- a statistical threshold of 60 percent for both female- and male-dominated categories;
- historical incumbency of women or men in the job class;
- occupational stereotyping;
- disproportion between the rate of representation of women or men in the job class and their rate of representation in the employer's total workforce.

"Neutral" jobs.

Under all Canadian pay equity legislation, a job class that meets none of the predominance criteria is deemed "neutral" and is excluded from the pay equity plan.

Predominance criteria more flexible. Must be bias-free.

When identifying job classes, all criteria must be met in order for a group of positions to be considered a job class. In contrast, when determining predominance, proactive legislation allows those in charge of the pay equity plan to choose the most relevant criterion. The sole condition for choosing among the criteria is the obligation to ensure the choice is free of gender-based discrimination. For example, when a job class is considered neutral, there must be actual evidence that none of the indicators suggests that either gender is predominant in the job. This exclusion might in fact be used to remove a highly paid male comparator from the pay equity plan.

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[23] Ontario, *supra*, note 5.

[24] Quebec, *supra*, note 6.

[25] Complaints of wage discrimination on grounds other than female gender continue to be handled by the Quebec human rights commission under section 19 of Quebec's *Charter of Human Rights and Freedoms*.

Predominance Indicators under Proactive Federal Legislation

Given the above discussion of the provisions regarding predominance, which aspects should be included in proactive federal legislation?

Statistical Indicators

Statistical indicators easy to apply, but too sensitive to minor changes.

As we have seen, statistical indicators are exact percentages from which it is possible to conclude that a job class is female- or male-dominated. The advantage of such a threshold is that it is easy to apply. However, it has one significant shortcoming: a minor change in the representation of women or men in a job class when the plan is established may modify its gender predominance. For example, when there are few incumbents in a job class, the departure of one or two employees can completely change the rate of representation. The end result is that predominance is somewhat artificial and its justification is lost.

The statistical threshold after which an occupation is identified with a socio-demographic group (labelling) is sometimes less than 50 percent as shown in certain studies.

> As the proportion of women reaches a "tipping point", the point at which the work begins to become defined as women's work, the proportion of women should have a large negative effect on the salaries of both men and women. However, when that tipping point is reached, further increases in the proportion of women should have little impact on individual salaries, because once jobs have been defined as women's jobs, there should be little additional negative effect of further increases in the proportion of women in the jobs.
>
> Jeffrey Pfeffer and Alison Davis-Blake. (1987). "The Effect of the Proportion of Women on Salaries: The Case of College Administrators." *Administrative Science Quarterly.* Vol. 32, p. 14.

Critical threshold is between 30 and 40% female.

In the study of Pfeffer and Davis-Blake, the critical threshold or "tipping point" occurs when the proportion of women in an occupation is between 30 percent and 40 percent. The link between predominance and wage discrimination depends on many variables, particularly psycho-social variables.

Their influence on job value and wages is lasting and does not automatically disappear when male or female representation in a job falls from 60 percent to 50 percent or 45 percent, for example.

Adding qualitative indicators also means the statistical indicator is not a mandatory condition for a job to be deemed female- or male-dominated. That being said, the debate surrounding the exact threshold of the statistical indicator becomes secondary, since whatever the figure, it will not be the deciding factor in decisions regarding predominance.

Predominance threshold should be the same for both women and men.

A number of submissions presented to the Task Force suggested a threshold of 50 percent plus one for determining predominance. We have seen that at the outset, this was the basis for the sliding scale proposed in the *Equal Wages Guidelines, 1986*. We favour this type of approach particularly in a context where other indicators may also support predominance. However, to avoid the ambiguity that would result from small variations on either side of 50 percent, we are setting the recommended threshold at 60 percent for female-dominated job classes. Moreover, we find no justification for setting a different threshold for male-dominated job classes. As Paul Durber indicates:

> The sliding scale, which is unique, is possibly more important where there is only one criterion, the quantitative one, for determining predominance.
>
> Paul Durber. (2002). *Criteria and Unit of Analysis for Sex Predominance and Pay Equity Evaluation*. Unpublished research paper commissioned by the Pay Equity Task Force, p. 23.

9.2 The Task Force recommends that the new federal pay equity legislation include a provision which defines a female-dominated job class as a job class where at least 60 percent of the employees are women and a male-dominated job class as a job class where at least 60 percent of the employees in that job class are men.

Qualitative Criteria

Purely quantitative criteria inadequate.

These criteria are considered qualitative because, while some make use of figures, they leave a margin of discretion to those in charge based on qualitative contextual elements. The submissions to the Task Force stress the necessity of broadening the criteria.

> Federal legislation should also explicitly take into consideration the historical incumbency and gender stereotypes that may have attached to a particular job class or field over time. In this way, the systemic and deep rooted nature of pay inequity can be recognized.
>
> Communications, Energy and Paperworkers Union (CEP). Submission to the Task Force on Pay Equity, April 2002, p. 5.

> To assist employers further, we suggest that two other principles should be considered—gender stereotyping and historical incumbency. These, combined with the current percentage occupancy should be utilized to identify the gender preponderance of a job.
>
> Hay Group Limited. Submission to the Pay Equity Task Force, June 2002, p. 18.

The tendency to use of a broad range of indicators aims to ensure that predominance does not become a purely statistical calculation, which would mask the reality of the workplace.

> The reason for having criteria for sex predominance is to make visible where women are working. Given the changes that take place in occupations generally, and the variety of occupational structures in the workplace, it is possible that a purely quantitative criterion will miss concentrations of women's work.
>
> Paul Durber. (2002). *Criteria and Unit of Analysis for Sex Predominance and Pay Equity Evaluation.* Unpublished research paper commissioned by the Pay Equity Task Force, p. 24.

That is why, as indicated below, we also recommend the use of other predominance criteria in addition to the statistical threshold.

A Significant Gap Between the Rate of Representation in a Job Class and the Rate of Representation in the Workforce under the Plan

Disproportionate representation.

In some workplaces, production jobs have a strong majority of men with the exception of one job, where women are substantially represented. This is the case for workers assigned to bookbinding in printing plants and workers who sort and assemble electrical wiring in plants that manufacture electrical appliances. In such cases, it can be observed that although female workers are not a majority in the job class, they are confined almost entirely to particular jobs and are not found in other job classes. It can also be observed that when a woman applies for work in one of these companies, she is automatically routed towards this job within the class. Examination of wage distribution very often shows that the most feminized job in these workplaces is also the lowest paid. The outcome is a disproportion between the rate of representation of female workers in that job class and their rate of representation in other categories under the plan. A similar situation exists for men in female-dominated workplaces. In this type of situation, the indicator of disproportion would in fact be an appropriate solution in certain female-dominated sectors, such as social services, since it would allow a male comparator to be identified.

9.3 **The Task Force recommends that the new federal pay equity legislation include a provision which indicates that a job class may be considered female- or male-dominated when the gap between the rate of representation for women or men in that job class and their rate of representation in the workforce covered by a pay equity plan is deemed significant.**

Historical Incumbency

Numerous submissions to the Task Force stressed the importance of historical incumbency.

> Changes in gender predominance after many years of historical patterns raise suspicions. Why has the gender predominance changed? Is it a genuine shift or is it an attempt by the employer to avoid pay equity claims?
>
> Canadian Telecommunications Employees' Association (CTEA). Submission to the Pay Equity Task Force, June 2002, p. 5.

Historical incumbency.

In Quebec, there is no set duration for establishing historical incumbency. Two factors can be taken into account: the rate of employee turnover and the date at which remuneration was set for that job class. The higher the turnover, the longer the period examined must be to reveal a trend. With reference to the date at which remuneration was set for the job class, its basis is the link between the setting of the wage and the perceived predominance of the job class, a link fundamental to the pay equity issue. One important condition, as the Ontario Commission points out, is that it be a period of time during which the characteristics of the job class have remained essentially the same.[26]

9.4 The Task Force recommends that the new federal pay equity legislation indicate that historical incumbency in a job class may be taken into account to determine gender predominance for that job class.

Occupational Stereotypes

Indicators may be internal or external.

This indicator, included in the pay equity legislation of Ontario and Quebec, refers to the labour market in general and even to society as a whole. While the previous indicators are calculated using company data, occupational stereotypes may be based on external or internal data such as:

- professional monographs, school books or literature in general;
- national or regional statistics indicating a high rate of representation of one gender in that occupation;
- old job offers, job descriptions or collective agreements.

Occupational stereotypes are especially useful when a new job class is created in a company, since no internal data are available with respect to gender predominance.

Occupational stereotypes are generally easy indicators to determine and apply, as by definition they are supposed to be fairly widely held in society. Moreover, these stereotypes are closely tied to the wage discrimination issue, since they reflect how we consider a job, its requirements and, indirectly, its worth.

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[26] Ontario Pay Equity Commission. *Guideline No. 7. Determining the Gender Predominance of Job Classes.* [electronic resource.] Accessible on the Commission's website at http://www.gov.on.ca/lab/pec/peo/english/guidelines/ge_7.html.

9.5 The Task Force recommends that the new federal pay equity legislation indicate that a job class may be deemed female- or male-dominated when it is commonly associated with women or men due to occupational stereotype.

Inclusion of Other Designated Groups

Double Discrimination

Impact of double discrimination.

Many submissions presented to the Task Force and the discussions during the round table for women's associations[27] emphasized the double discrimination against female workers who are Aboriginal people, members of a visible minority, or persons with disabilities.

> It may be time to broaden the scope of the Act to include other grounds of discrimination including race-based wage discrimination. If occupational segregation by race is occurring as well as gender stereotyping and occupational segregation, and there is systematic undervaluing of the work done by minority groups, race should be considered as an expansion ground for pay equity legislation. Clearly, however, more study is warranted in order to appropriately identify then fashion solutions to these issues of systemic discrimination which may serve to add layers of discriminatory impact on women's wages, and especially the wages of women of colour.
>
> United Steelworkers of America (USWA). Submission to the Pay Equity Task Force, June 2002, p. 6.

> Accordingly, the particular concerns of racialized women not only require further analysis, but also must be recognized and addressed by the new pay equity legislative scheme.
>
> [...]
>
> It is NAWL's position that the unique concerns of disabled women must be recognized and addressed by the new pay equity legislative scheme.
>
> National Association of Women and the Law (NAWL). Brief to the Pay Equity Task Force, December 2002, pp. 12, 15.

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[27] This round table was held on October 25, 2002, and brought together representatives from various women's associations.

> There appears to be little doubt that systemic discrimination in pay is not simply gender-based, but also exists on the basis of race and disability. In addition, discrimination is often interactive and thus visible minority women may be double victimized. To this end, the CEP supports and adopts the CLC's submissions on expanding pay equity to include wage discrimination on the basis of these additional grounds. If the purpose of pay equity is to eliminate historically-based systemic discrimination, it should be inclusive of groups which are disadvantaged on other proscribed grounds.
>
> Communications, Energy and Paperworkers Union of Canada (CEP). Supplementary submission to the Pay Equity Task Force, November 2002, p. 5.

According to the representatives of the National Métis Women of Canada, female workers who are Métis experience occupational segregation. A high percentage of them work as restaurant waitresses or cooks, jobs in which they are discriminated against in terms of wages due to their origin and gender.[28]

Presence of other grounds of discrimination must be noted in plans.

When predominance in a job class is attributable partially to the presence of female workers who are members of a visible minority or another designated group, this should be clearly indicated in the pay equity plan. In fact, such a situation points to potential double discrimination in that job class. Special care must be taken in this case to make visible the requirements of jobs held by women who are members of a visible minority, Aboriginal people or persons with disabilities. This special care will require that measures be taken, particularly with respect to representation on the pay equity committee[29] and to training, information and postings for the pay equity plan. Such measures are necessary to avoid perpetuating prejudices or discriminatory approaches with regard to these female workers and to afford them equal protection under the law.

Simultaneous Use of the Gender Criterion and Other Discrimination Criteria When Determining Predominance

Other disadvantaged groups in the labour market.

The wage discrimination issue, presented in Chapter 1, indicates this problem may affect several groups proven to be at a disadvantage in the labour market, particularly women,

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[28] Comments made during the round table for representatives of women's associations, ibid.

[29] See Recommendation 8.5.

Aboriginal people, persons with disabilities, and members of visible minorities. From this perspective, a number of situations may arise, the first being the substantial presence of another designated group in a job class. For example, it may be found that in one job class in a company, workers (male and female) belonging to visible minorities represent a significant proportion of the workforce. In this case, how can a threshold be established to determine if members of visible minorities are predominant in that job class?

Using disproportion to establish predominance thresholds.

Models in this area are limited. In the United States, a pay equity plan for New York State government employees used the disproportion as the threshold for predominance and defined it as follows:

> A "disproportionately Black and Hispanic" job title is one in which there are at least 40 percent more Black and Hispanic workers than would be expected given their proportion in the workforce. [...] Since Blacks and Hispanics constitute 22 percent of the New York State workforce, a disproportionately Black and Hispanic title is one in which 30.8 percent or more of the incumbents are Blacks and Hispanics.[30]

The advantage of this indicator is that it gives a benchmark figure to the concept of disproportion—in this case, the proportion of minorities in the New York State workforce, which was relatively high. This proportion was then increased by 40 percent to determine the threshold at which visible minorities are considered to be predominant in that job class. Elsewhere, the proportion was increased by 50 percent.[31]

Visible minorities represent 13.4% of Canada's labour force.

Could such an approach be applied in Canada? The proportion of visible minorities in Canada's labour force is 13.4 percent. If that rate were increased by 50 percent, the predominance threshold would be 20.1 percent. We believe that threshold would be difficult to justify.

Another potential approach is that used in the San Francisco Public Service. The presence of both women and members of minorities was used as an indicator of predominance by adding the two together. If the total in a job class was equal to or greater than their combined representation in the Public Service, the job class was considered to have a double predominance.[32]

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[30] National Committee on Pay Equity. (1987). *Pay Equity: An Issue of Race, Ethnicity and Sex*. Washington, pp. 88-89.

[31] National Committee on Pay Equity. (1993). *Erase the Bias. A Pay Equity Guide to Eliminating Race and Sex Bias from Wage Setting Systems*. Washington, p. 25.

This type of indicator addresses the concerns of the Canadian Labour Congress.

> Our studies of recent labour market developments indicate the workers of colour are increasingly found in traditional female job occupations. In our view, these occupations have been systematically and historically undervalued due to female incumbency. We think therefore that using gender neutral evaluation tools and systems will be sufficient to assess the proper value of such work, even if the occupations are predominately held by racialized workers. That is, at this point, in the absence of further research on the issue, we are not proposing any requirement to develop race-neutral evaluation tools and systems.
>
> Canadian Labour Congress (CLC). Final submission to the Pay Equity Task Force, November 2002, p. 7.

Predominance indicators used in Canada must be broadened.

Such an indicator could be developed under proactive federal legislation. If 60 percent of the employees in a job class are either female workers or visible minority workers (or workers in another designated group), that job class can be treated as a female-dominated category. In other words, it must be compared to the male-dominated job classes in the pay equity plan.
An examination of historical incumbency will likely also reveal a substantial proportion of women incumbents in the past or relatively clear stereotypes. The benefit of this indicator is that it would also identify groups other than women and ensure they are given special attention throughout the process. Admittedly, this approach is new and has not yet been studied much in Canada. But considering the demographic evolution of Canada's population and the unfavourable characteristics of labour market integration for some groups, it is imperative that indicators of predominance be broadened in this way.

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[32] Civil Service Commission. Document No. 2296-86, 23/1/87, unpublished. San Francisco.

9.6 **The Task Force recommends that the new federal pay equity legislation indicate that a job class will be treated as a female-dominated job class when the combined representation of employees of a designated group—visible minorities, Aboriginal people, or persons with disabilities—and women is 60 percent or more of the employees in that job class.**

Conclusion

This chapter presented the two steps of the first stage of a pay equity plan. The purpose of the recommendations put forward by the Task Force in this chapter is to ensure the process complies with the legislation's primary objective while remaining flexible and inclusive. Research in this area, particularly on pay equity implementation for other designated groups, should continue to better guide those in charge of applying the law. However, as we have indicated, the approaches developed for women can already be applied to other groups discriminated against on the basis of wages.

Chapter 10 – Evaluating Gender Predominant Job Classes

Job evaluation is a relatively widespread management practice in Canadian and American workplaces.

Job evaluation – systematic approach to comparing job classes.

Job evaluation is a systematic approach to comparing job classes in order to establish their relative value in a given organization. Historically, the use of evaluation methods began in the 1920s and '30s in the United States.[1] They were initially created for a few large American companies that wished to establish a hierarchy between jobs that were almost exclusively male, such as managerial and trades occupations. Use of these methods spread in the 1940s when the American government used them to harmonize wages among various federal departments.

Job evaluation systems become popular in '50s and '60s.

In the 1950s and '60s, a number of consulting firms in the field of evaluation and compensation helped to popularize evaluation methods, though mainly for the purpose of measuring the characteristics of men's jobs.

> Several major job evaluation systems were developed initially in the period between the end of the Second World War and 1960, such as the Aiken Plan (until recently the property of Stevenson, Kellogg, Ernst and Whinney) and the Hay Plan. The latter has evolved as it has been applied to more blue collar and trades jobs, to incorporate a broader reach of aspects of work (notably working conditions).
>
> Paul Durber. (2002). *Valuing Work and Pay Equity: Issues, Practices and Future Directions.* Unpublished research paper commissioned by the Pay Equity Task Force, p. 9.

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[1] See in particular Ginette Dussault. (1987). *À travail équivalent, salaire égal: la portée de la revendication.* Montréal : Institut de recherche appliquée sur le travail.

Paul Durber asserts that job evaluation is now a relatively widespread practice in several sectors under federal jurisdiction:

> Within the Public Service proper, all jobs are subject to job evaluation, at least at the level of relative worth within specific occupations. The federal Public Service uses job evaluation exclusively. It is also understood that the banks use central job evaluation plans to establish their pay hierarchies. Crown corporations appear to make extensive use of formal job evaluation, but with frequent job pricing. The telecommunications industry appears to use both approaches about equally for unionized jobs. Airlines appear to use mainly job pricing for jobs under collective bargaining.
>
> Paul Durber. (2002). *Valuing Work and Pay Equity: Issues, Practices and Future Directions.* Unpublished research paper commissioned by the Pay Equity Task Force, p. 9.

Purpose of job evaluation.

According to the International Labour Office (ILO), the purpose of job evaluation is:

> [TRANSLATION] [...] to identify, using good judgment and analysis, the key characteristics of a position, based on how demanding the position is and how much it contributes to the organization as a whole. Judgment and analysis are used consistently within a framework of common criteria.[2]

This definition stresses the parameters that characterize job evaluation in a general context:

- the role of *judgement* and *analysis*, which are *systematized* based on *criteria;*
- the fact the evaluation is based on the *requirements of the position* rather than the characteristics of incumbents; and
- the fact that job value is based on *the job's contribution to the organization*, which infers that it is determined within the organization and must be justified by the job's contribution to the objectives of the organization.

However, this definition is very general and ignores any gender-based discrimination that may result from the evaluation.

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[2] International Labour Office (ILO). (1984). *L'évaluation des emplois.* Geneva, p. 2.

Job Evaluation in Pay Equity and the Non-Discrimination Requirement

Impact of occupational segregation.

It was mainly in the 1970s that researchers began to take an interest in job evaluation from a pay equity perspective. The purpose was to determine whether wages for women's jobs were discriminatory compared with wages for men's jobs, based on the respective requirements of those jobs. Given the widespread occupational segregation in the labour market and the fact that women's jobs were very different from men's jobs in terms of requirements, a way to compare men's and women's jobs using a common basis for measurement had to be found. Job evaluation methods did indeed allow for comparison of different occupations. Nonetheless, it was quite clear from the outset that these methods, as designed and applied at the time, very poorly reflected the requirements of women's jobs. In fact, they were often the source of wage discrimination in the companies that used them. To meet the needs of pay equity implementation, the field of knowledge regarding non-discriminatory evaluation criteria developed gradually based on empirical research[3] and case law.[4]

Beijing Platform for Action.

Today, gender-neutral job evaluation is increasingly becoming the preferred approach to achieving pay equity. It is one of the measures recommended in the Beijing Platform.

> **Strategic objective F.5. Eliminate occupational segregation and all forms of employment discrimination:**
>
> **Actions to be taken**
>
> 178. By Governments, employers, employees, trade unions and women's organizations:
>
> k) Increase efforts to close the gap between women's and men's pay, take steps to implement the principle of equal remuneration for equal work of equal value by strengthening legislation, including compliance with international labour laws and standards, and encourage job evaluation schemes with gender-neutral criteria.

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[3] See in particular the work of D.J. Treimann and H.I. Hartmann, (1981), *Women, Work and Wages: Equal Pay for Work of Equal Value*, Washington: National Academic Press; R. Steinberg and L. Haignere, (1985), *Equitable Compensation: Methodological Criteria for Comparable Worth*, Albany: Center for Women in Government, State University of New York; Nan Weiner, (1991), "Job Evaluation Systems: A Critique," *Human Resource Management Review*, Vol. 1, No. 2, pp. 119-132.

[4] See in particular the rulings by the Pay Equity Hearings Tribunal of Ontario.

It has been adopted successfully in workplaces in Canada, the United States and Europe. It is no longer a question of whether job evaluation is appropriate in the pay equity context, but rather an issue of improving it based on the objective of pay equity and of creating the tools to make its application as accessible as possible.

Entire evaluation process must be gender-neutral.

Generally, the criteria associated with job evaluation in the pay equity context are referred to as *gender-neutral*. This term emphasizes the necessity of including all the overlooked aspects of women's jobs in the job evaluation process and of giving them as much attention as the characteristics of men's jobs. This was the subject of an important ruling by the Pay Equity Hearings Tribunal of Ontario, which stated as follows:

> Gender bias can enter at different points in the process; in collecting information on job classes; in the selection and definition of sub-factors by which job classes may be evaluated; in weighting of factors and in the actual process of evaluating jobs. The Supreme Court of Canada has said when addressing programs designed to redress systemic discrimination in employment, that a system must be able to analyse and destroy systemic patterns and must include measures designed to break the continuing cycle of systemic discrimination. The purpose of using a gender neutral comparison system is to remove the arbitrariness and gender bias in the valuing of work. By introducing a systematic means of identifying and valuing work, the comparison system reduces some of the subjectivity and underlying assumptions in evaluating work which have been part of the historical pattern of wage discrimination encountered by women workers.[5]

It is not enough to indicate that one part of the process (for example, the definition of factors and subfactors or their weighting) is gender-neutral. As the Tribunal pointed out, checks must be performed to ensure the entire process is gender-neutral.

Supreme Court of Canada – Meiorin decision.

In light of the Meiorin decision by the Supreme Court of Canada,[6] which asserts that workplace standards must be inclusive of diversity, Mary Cornish et al. maintain that:

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[5] *Haldimand-Norfolk (No. 6)* (1991) 2 P.E.R. 105.

[6] *British Columbia (Public Service Employee Relations Commission) v. British Columbia Government and Service Employees Union* (BCGSEU), [1999] 3 S.C.R. 3.

> While the Meiorin-style language of "gender inclusivity" better reflects the objective of pay equity measures, it is not substantially different from the examination of jobs that was carried out under the name of "gender neutrality". Nevertheless, it is our opinion that the language of "gender inclusivity" may enhance the ability to properly value women's work by expressly acknowledging that work relationships and institutions are gendered and that these gendered relationships must be given full remuneration for their value. Pay equity does not erase gender; it only seeks to eradicate discrimination based on gender.
>
> Mary Cornish, Elizabeth Shilton and Fay Faraday. (2002). *Canada's International and Domestic Human Rights Obligations to Ensure Pay Equity: Obligations to Design an Effective, Enforceable and Proactive Federal Pay Equity Law.* Unpublished research paper commissioned by the Pay Equity Task Force, p. 55.

Inclusiveness – ensuring standards and criteria reflect workplace diversity.

In our view, the word *inclusive* could be used to reflect more accurately the recommended evaluation practices in pay equity, which are intended to include gender differences rather than to ignore them. It is a matter of transforming standards and criteria to reflect fully the diversity in the workplace. We suggest that the documents and guides created for the new federal pay equity legislation emphasize the inclusiveness of criteria and practices rather than their neutrality.

Inclusiveness must be reflected in the evaluation method, tools and process and must be verified at every stage.

Evaluation and Subjectivity

The use of job evaluation methods gives rise to a debate regarding the subjectivity of any concept of job value or worth. During our consultation process, a number of participants pointed out that job evaluation methods are subjective.

> The notion of a purely objective and scientific measure of job value is *inherently* untenable; and beliefs about the "worth" of jobs are inherently subjective.
>
> Mark R. Killingsworth. Submission to the Pay Equity Task Force, February 2003, p. 4.

> Even the most rigorous job evaluation exercise relies heavily on subjective judgments.
>
> Federally Regulated Employers – Transportation and Communications (FETCO). Submission to the Pay Equity Task Force, June 2002, p. 4.

Proper instruments and controls allow for bias-free evaluation.

Other participants during the consultation process took a more nuanced view.

> The subjectivity [of job evaluation] can thus be kept under control with well designed evaluation instruments and procedures.
>
> Alan Sunter. Submission to the Pay Equity Task Force, November 2002, p. 13.

> Subjectivity can, however, creep into the *application* of the job evaluation process, and this is where controls are necessary. For example, a job evaluation process should be applied by personnel who are well trained for the purpose. The program must be screened regularly to ensure the consistent use of standardized vocabularies of gender neutral language and meanings. Then the process must be applied consistently and universally throughout the establishment.
>
> Canadian Bankers Association (CBA). Submission to the Pay Equity Task Force, November 2002, p. ii-iii.

> While job evaluation is subjective, if properly undertaken in a systemic gender-bias free manner, using a gender-bias free workplace relevant tool, the evaluations provide a reliable relative measure of job worth in a particular workplace [...]. Key to reliability is that the committee is properly trained and that consistency is ensured by several safeguards.
>
> The Canadian Association of University Teachers (CAUT). Submission to the Pay Equity Task Force, November 2002, p. 27.

Purpose of job evaluation is to compare jobs.

The last three comments basically contend that there are ways to reduce subjectivity. It must also be understood that the purpose of job evaluation is not to definitively determine the importance or prestige of a job, but rather to compare the jobs within an organization using a method and tools that are standardized and non-discriminatory.

The remaining sections in this chapter discuss a number of ways to make job evaluation less subjective and thus ensure that the process is non-discriminatory and rigorous.

The two stages of the pay equity plan that concern job evaluation according to the sequence set out in Chapter 7 will be examined in this chapter:

- Stage 2: creating the method, tools and process of evaluation.
- Stage 3: evaluating gender predominant jobs.

Job Evaluation for Pay Equity Purposes in Canadian Jurisdictions

Canadian Human Rights Act.

The *Canadian Human Rights Act*[7] (CHRA) and the *Equal Wages Guidelines, 1986*[8], include provisions respecting job evaluation. Subsection 11(2) of the Act stipulates that:

> 11.(2) In assessing the value of work performed by employees employed in the same establishment, the criterion to be applied is the composite of the skill, effort and responsibility required in the performance of the work and the conditions under which the work is performed.

Sections 3 to 8 of the *Equal Wages Guidelines, 1986*, present the main aspects of the four criteria and detail how they should be considered:

> **Assessment of Value**
>
> **Skill**
>
> 3. For the purposes of subsection 11(2) of the Act, intellectual and physical qualifications acquired by experience, training, education or natural ability shall be considered in assessing the skill required in the performance of work.

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[7] Canada. *Canadian Human Rights Act*. R.S.C. 1985, c. H-6.

[8] Canada. *Equal Wages Guidelines, 1986*, SOR/86-1082.

> 4. The methods by which employees acquire the qualifications referred to in section 3 shall not be considered in assessing the skill of different employees.
>
> **Effort**
>
> 5. For the purposes of subsection 11(2) of the Act, intellectual and physical effort shall be considered in assessing the effort required in the performance of work.
>
> 6. For the purpose of section 5, intellectual and physical effort may be compared.
>
> **Responsibility**
>
> 7. For the purposes of subsection 11(2) of the Act, the extent of responsibility by the employee for technical, financial and human resources shall be considered in assessing the responsibility required in the performance of work.
>
> **Working Conditions**
>
> 8. (1) For the purposes of subsection 11(2) of the Act, the physical and psychological work environments, including noise, temperature, isolation, physical danger, health hazards and stress, shall be considered in assessing the conditions under which the work is performed.
>
> (2) For the purposes of subsection 11(2) of the Act, the requirement to work overtime or to work shifts is not to be considered in assessing working conditions where a wage, in excess of the basic wage, is paid for that overtime or shift work.[9]

Section 9 of the Guidelines indicates the general conditions for an acceptable evaluation method. It:

> (a) operates without any sexual bias;
>
> (b) is capable of measuring the relative value of work of all jobs in the establishment; and
>
> (c) assesses the skill, effort and responsibility and the working conditions determined in accordance with sections 3 to 8.[10]

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[9] Ibid.

[10] Ibid.

Proactive pay equity legislation.

Current proactive pay equity legislation in Canada includes relatively few provisions on job evaluation compared with other methodological aspects of the pay equity plan. Three requirements are explicitly stipulated in the proactive legislation of Manitoba[11], Ontario[12], Prince Edward Island[13] and Nova Scotia[14]:

- job value is determined by four factors: skill, effort and responsibility normally required to perform the work and the conditions under which the work is normally performed;
- the evaluation system must be free of gender bias; and
- the same gender-neutral evaluation system must be applied to both predominantly female and predominantly male job classes.

Under the *Pay Equity Act* in Quebec, section 56 states the following:

> 56. The method selected by the pay equity committee, or by the employer in the absence of such a committee, for determining the value of job classes must allow the predominantly female job classes to be compared with predominantly male job classes.
>
> It must highlight the specific characteristics of predominantly female job classes and those of predominantly male job classes.[15]

The latter paragraph stresses the necessity of carefully examining predominantly female jobs but also indicates the entire process must be performed with a view to achieving pay equity. It is not a matter of improving the valuation of predominantly female jobs to the detriment of predominantly male jobs.

Like other pay equity legislation in Canada, section 57 of the Quebec *Pay Equity Act* lists the four factors which must be taken into account for each job class – required qualifications, responsibilities, effort required and conditions under which the work is performed.[16]

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[11] Manitoba. *Pay Equity Act*. C.C.S.M. c. P13 1985.

[12] Ontario. *Pay Equity Act*. R.S.O. 1990, c. P.7.

[13] Prince Edward Island. *Pay Equity Act*, R.S.P.E.I. 1988, c. P-2.

[14] Nova Scotia. *Pay Equity Act*. R.S.N.S. 1989, c. 337.

[15] Quebec. *Pay Equity Act*. R.S.Q. 1995, c. E-12.001.

[16] Ibid.

Quebec's *Pay Equity Act* describes method, tools and process of evaluation.

Moreover, to indicate clearly the importance of the design of the process, the evaluation phase is broken down into two components: the preliminary development of the evaluation method, tools and process, and the actual evaluation per se.

Finally, as we indicated earlier in another respect, it specifies the employer's obligation to ensure that all the elements of the pay equity plan, and the application of those elements, are free of gender discrimination, a requirement that clearly applies to the entire evaluation.

This brief review highlights the similarities of the various laws, that is:

- ➤ the four criteria for determining job value;
- ➤ the obligation to choose a gender-neutral system or method; and
- ➤ the application of this method or system to all jobs covered by the pay equity plan.

Furthermore:

- ➤ the *Equal Wages Guidelines, 1986*[17], explains how the four criteria should be interpreted; and
- ➤ Quebec's proactive legislation separates the design of the evaluation method, tools and process from the process of job evaluation per se.

Job Evaluation for Pay Equity Purposes: A Few International Examples

International experience with job evaluation.

In the past fifteen years, a number of evaluation approaches have been developed in Europe for pay equity purposes. Various jurisdictions have developed and adopted evaluation methods. A few of these European methods are briefly described below.

The ABAKABA and ÉVALFRI Methods

The ABAKABA (Analytische Bewertung von Arbeitstätigkeiten nach Katz und Baitsch) method was developed in Switzerland by Professor Christof Baitsch and Dr. Christian Katz and applied in various places, in particular the state of Fribourg, where it was adapted slightly and re-named the ÉVALFRI method.[18,19]

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[17] Canada, *supra*, note 8.

[18] Dr. Edeltraud Ranftl. (2001). Non-discriminatory Job Evaluation – *Application of the NJC System within an Action Research Project in Austria*. Paper presented to the International Conference on Equal Pay – Models and Initiatives on Equal Pay. Berlin.

[19] Commission d'évaluation et de classification. (2001). *Évaluation des fonctions à l'État de Fribourg*. Fribourg. This method is presented in this section.

Evaluation criteria.

The evaluation criteria are based on spheres instead of factors:

- the intellectual sphere;
- the psycho-social sphere;
- the physical sphere; and
- the sphere of specific responsibilities and risk. This sphere may be intellectual, psycho-social or physical in nature.

The four spheres are examined from the following perspectives:

- requirements;
- inconvenience or responsibility; and
- frequency.

The Fribourg Conseil d'État established by decree the following weighting for ÉVALFRI method criteria:

- intellectual sphere: 58%;
- psycho-social sphere: 17%;
- physical sphere: 8%;
- responsibility: 17%.

A detailed examination of the method's structure reveals that it covers the same field as the methods with four factors: qualifications, responsibility, effort and conditions under which the work is performed. No factors are added or removed. It is simply another way to structure the factors.

ÉVALFRI method applies to all occupations in an organization.

The ÉVALFRI method and the ABAKABA method from which it was adapted apply to all the occupations in an organization from clerical to manual categories – regardless of hierarchical level or content. Users identify this as one of the method's key advantages since it avoids the limitations that occupational segregation imposes upon wage discrimination corrections.

The NJC System – National Joint Council Job Evaluation System (NJC JES)

NJC System changes the historical rank order of jobs.

This method was created for the local government sector in England and Wales[20] and was developed jointly by the representatives of employer associations and labour organizations through national councils.

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[20] Sue Hastings. (2001). *Developing a Less Discriminatory Job Evaluation Scheme. A Case Study: The Local Government (NJC) Job Evaluation Scheme.* Paper presented at the International Conference on Equal Pay. Berlin.

The method has 13 subfactors associated with the four usual factors: qualifications, responsibility, effort and conditions under which the work is performed. The number of levels for each subfactor was limited to make the differences between them clearer. The NJC system was first applied in 1997, but met with some resistance at the local level and encountered difficulties where labour relations were of a conflictual nature.

A 2001 report on the results indicates that:

> The NJC JES does change the historical rank order of jobs. Because the scheme is implemented at local authority level, there are no universal outcomes, but the general trend is for (generally female dominated) direct client and care jobs to move up the rank order relative to traditionally male dominated areas, such as highways, engineering and finance. The extent of the change has surprised some, who thought that the scope of equal pay issues in the local government sector was limited to those identified through the equal pay claims [...]. It is now clear that the problems are more fundamental.[21]

The NJC system is very similar to the methods used in Canadian jurisdictions. Like the ABAKABA method, it applies to all occupations in an organization.

Steps to Pay Equity: An Easy and Quick Method for the Evaluation of Work Demands[22]

This evaluation method was developed in Sweden by the Equal Opportunities Ombudsman in order to facilitate pay equity implementation. It involves three factors:

- qualifications, including:
    - education and experience;
    - problem-solving skills;
    - social skills.

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[21] Ibid., p. 11.

[22] Anita Harriman and Carin Holm (Swedish Equal Opportunities Ombudsman). (2001). Steps to Pay Equity: An easy and quick method for the evaluation of work demands. Lönelots/Jam.

- responsibility, including:
  - responsibility for material resources and information;
  - responsibility for people;
  - responsibility for planning, development, results and management.
- working conditions, including:
  - physical conditions;
  - mental conditions.

Physical and mental conditions.

Physical and mental conditions are defined to take into account the effort factor, but from a perspective particularly well adapted to consideration of women's work. In fact, physical conditions refer to physical strain, strain on the senses, unpleasant physical conditions and risk of personal injury or illness. Mental conditions refer to concentration, monotony, availability, trying relationships and psychological stress.

In terms of responsibility, the inclusion of responsibility for planning, management, results and development under a single subfactor ensures that these requirements are not counted twice and that men's jobs are not overvalued, as is the case with some traditional methods.

The document clearly explains the process and the practices to avoid or include; it also proposes a questionnaire designed mainly for the incumbents of the positions to be evaluated.

While other methods also exist, this review is not exhaustive and is intended only to point out certain interesting aspects and the similarity of evaluation criteria for pay equity. These three methods also share other points in common: their public nature, which allows them to be used and adapted by a wide range of organizations, their universal nature and, finally, the availability of detailed, easy-to-understand guides. These guides make the work of pay equity committee members easier and suggest ways to overcome obstacles to implementation with a list of good practices.[23]

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[23] For a more complete review of the situation in Europe, see Ariane Tennant. (2002). *A Comparative Study of European Union and Selected National Approaches*. Unpublished research paper commissioned by the Pay Equity Task Force.

Evaluation Methods

The overview of proactive Canadian legislation shows that none of the laws imposes a specific evaluation method as mandatory for all employers regardless of their characteristics. No predetermined method can be effective in every workplace. Several stakeholders stated their wish to see flexible legislation in this regard.

> [TRANSLATION] The job evaluation method must be left to the discretion of the parties based on the realities of the workplace.
>
> Fédération des travailleurs et travailleuses du Québec (FTQ). Submission to the Pay Equity Task Force, April 2002, p. 9.

There are generally two types of evaluation methods: global/ranking methods and analytical methods.

Global/Ranking Methods

This type of method:

> [TRANSLATION] Consists of ranking jobs in a global fashion according to the importance of job requirements.[24]

Job ranking methods.

Different types of ranking methods exist, including:

> [TRANSLATION]
>
> ➤ General overall ranking: committee members [...] rank jobs based on their relative requirements, from the most demanding to the least demanding. [...]
>
> ➤ Job-to-job ranking: committee members [...] systematically compare jobs against one another to determine, for each potential pair, the most demanding job.[25]

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[24] Roland Thériault and Sylvie St-Onge. (1999). *Gestion de la rémunération. Théorie et pratique*. Montreal: Gaëtan Morin éditeur, p. 233.

[25] Ibid., p. 234.

Ranking methods for small workplaces.

Ranking methods are appropriate for small workplaces and may facilitate the work of evaluators. However, these methods include a number of shortcomings:

- they are not very accurate and are difficult to use when there are more than ten or so job classes;
- they are based on the entire job and sometimes lead to the identification of job characteristics and the characteristics of the incumbent, which may give gender-based prejudices a toe-hold; and
- they make pay equity maintenance more difficult, since any change in job class content or a new job class makes it necessary to repeat the entire comparison and ranking process.

Analytical Evaluation Methods: The Point Method

Defines factors and subfactors.

The analytical point method is the most common evaluation method, especially in relation to pay equity. With the point method, the criteria or factors and subfactors are defined, then assigned degrees or levels of intensity, frequency or any other aspect that may differentiate job classes.

This method is more precise than overall methods and can be adapted to different types of organizations. It is well suited for evaluating job classes when a requirement changes or when a new job class is added. However, the point method is more difficult to explain to those in charge of job evaluation and adapting it may require time and financial resources. Overall, one major advantage of the point method in pay equity is that it makes the process less subjective by systematizing the analysis of job class content. That also makes it easier to detect gender bias. The method has been adapted for small businesses to make it less costly to implement.

Evaluation Criteria or Factors

All four factors (skill, effort, responsibility, working conditions) must be considered.

Current pay equity legislation requires that all four factors be taken into account for every job class and does not allow for the addition of any other factors, though each of these main factors can be broken down into subfactors. As we have seen, these factors are used in all Canadian jurisdictions as well as in other countries. Experts in the field believe that these factors can take any new occupational requirements into consideration.[26]

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[26] See Paul Durber. (2002). *Valuing Work and Pay Equity: Issues, Practices and Future Directions*. Unpublished research paper commissioned by the Pay Equity Task Force, p. 36.

Evaluation must consider overlooked or neglected work.

As the Ontario Pay Equity Hearings Tribunal stated, notably in the Haldimand-Norfolk case, and as pay equity specialists maintain, the job evaluation system must make work and more specifically women's work more visible and the data collected must accurately reflect the four factors – skill, effort, responsibility and working conditions. The methodology must be inclusive not only in the choice of subfactors but in their description. The following paragraphs provide examples of subfactors.

Qualifications

It is important to consider the various qualifications that jobs require: physical, intellectual and interpersonal skills. Traditional evaluation methods often took into account only education and experience. Today the trend in human resources is to include skills which can be acquired through education or experience (both inside and outside the labour market) or which may be inherent. In this framework, compensation is not commensurate with how the skill was acquired, but with the fact that the skill is required to perform the work.

Skills associated with women's work.

To be inclusive, a method must consider the range of skills required in a given workplace, including those associated with women's work. For example, the following sensory skills are often typical of women's work:

- assembling parts with precision;
- visually detecting differences;
- listening to discussions for transcription purposes or dictation of texts; and
- assessing the quality of a product.

For example, such requirements are part of the work of seamstresses and assembly workers at electrical or electronic equipment plants, both occupations in which there is a very high proportion of women workers who are members of visible minorities.

Responsibilities

Traditional evaluation methods.

With traditional evaluation methods, the responsibility factor largely favours men's jobs. In fact, responsibility is often confused with hierarchical authority, which significantly restricts its meaning and negatively affects women's jobs, where responsibility is often not hierarchical in nature. A guide published by the Canadian Human Rights Commission suggests a more inclusive definition of responsibility:

> A job requirement that is important to, or could have an impact on, an organization, or which has a degree of accountability associated with it [...].[27]

This allows for consideration of a wide range of responsibilities, including:

- responsibility for people;
- responsibility for human resources;
- financial responsibility;
- responsibility for confidentiality.

These responsibilities are often associated with high-level jobs in a company, which leads to them being often ignored in jobs held by subordinates. However, these responsibilities are often part of women's jobs. With respect to confidentiality, women's jobs often include access to knowledge such as:

Women's work also requires confidentiality.

- information about customers;
- the correspondence and activities of hierarchical superiors;
- payroll information;
- health information.

In addition, in terms of responsibility for people, the following requirements are most often associated with women's jobs:

- listening to and comforting patients;
- contact with the public, clients;
- supervision and safety of young children.

These requirements characterize many women's occupations such as child care, nursing, domestic service—jobs in which there is also a greater concentration of women workers who are members of visible minorities. Obviously, it is not a matter of including all these elements in every evaluation method, but of choosing those that correspond to the range of work performed in an organization from the perspective of inclusiveness.

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[27] Canadian Human Rights Commission. *Guide to Pay Equity and Job Evaluation*. Vol. 1: *A Summary of Experience and Lessons Learned*. Vol. 2: *The Making of a System*, p. 117. Available on the Canadian Human Rights Commission website at: http://www.chrc-ccdp.ca.

Effort

Effort is traditionally identified mainly as physical effort like that in predominantly male jobs. It is usually associated with labour intensive work, and includes for example the work done by truckers, warehouse workers, heavy equipment operators, and road workers.

A pay equity plan should take into account a wide range of effort, particularly mental effort, which may include various intellectual, psychological or sensory requirements. An inclusive evaluation method should equally highlight these factors so they can be evaluated later.

Psychological or emotional effort is often neglected.

Psychological or emotional effort is a neglected characteristic of women's jobs, as Karen Messing explains:

> Some emotional aspects of jobs are assigned almost exclusively to women. Perhaps because it applies to few men's jobs, the concept of emotional labor has only recently been developed to describe the requirements of some jobs in the service sector. Hochschild defines emotional labor as "the management of feeling to produce a publicly observable facial and bodily display...sold for a wage." She describes how airline flight attendants are explicitly paid to manage their own and the passengers' emotions, to prevent fear and create customer loyalty. Women airline attendants, she notes, are much more likely to be required to perform this type of emotional labor than men.[28]

The same applies to cashiers:

> Cashiers and tellers, for example, must keep customers moving quickly while remaining polite, friendly, and helpful. They must defuse difficult situations while keeping their self-respect and making the customer happy.[29]

Multi-skilling requires intellectual effort.

The multi-skilling requirement of many women's jobs, such as primary school teachers and nurses, also results in intellectual effort. Nurses must constantly alternate between very different tasks: checking and adjusting medical devices, comforting patients, writing detailed reports for physicians, consulting with the families of patients, coordinating care, administering injections, and so on. Such work requires a high degree of intellectual effort, a fact often ignored and, consequently, not compensated.

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[28] Karen Messing. (1998). *One-Eyed Science: Occupational Health and Women Workers*. Philadelphia: Temple University Press, p. 9.

[29] Ibid., p. 117.

Physical effort typical of women's work often ignored.

Physical effort, on the other hand, is traditionally considered less important in women's jobs. Wrongly so, however, as shown by many studies that have led to this factor being redefined to reflect the characteristics of physically demanding women's work:

> Even though we do not think of women as doing heavy physical labor, many women's jobs have an important physical component, which can produce aches and pains and eventually even cripple. Secretaries type thousands of characters per hour, repeatedly sliding the same tendons over the same joints. Day care center workers pick up 20-pound children over and over again. Pressers lift heavy irons. Cleaners scrub to remove grime. Primary school teachers bend over little children's desks for long periods in one of the most taxing positions for the human back.[30]

Evaluation plans that have been adapted to the gender-neutral criteria of pay equity do consider aspects that traditional methods ignore, such as working in a difficult position (crouching, for example) and standing or sitting for long hours without being able to change positions.

Conditions Under Which the Work Is Performed

Working conditions refer to the physical and psychological environment in which the work is performed. Physical conditions may include exposure to noise, dust, irritating chemical products, and contagious diseases. Psychological conditions refer to the aggressiveness of clients, frequent work interruptions, simultaneous requests—all of which are a major source of stress.

The following excerpt, which describes the work of a bank teller, is revealing in this regard:

> When the ergonomists started to observe her, the branch manager had just asked her to pay the bank's outstanding utility and other bills. She alternated this task [...] with serving clients until the manager asked her to order paper for the branch. She continued alternating the second task [...] with serving clients and giving advice to

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[30] Ibid., pp. 5-6.

> colleagues until the manager came and asked her to do some photocopying [...]. She alternated the second and third tasks with serving clients and helping colleagues even after the manager added a fourth task [...].
>
> There was also overlap in client service. The teller usually finished the paperwork from a transaction with one client while initiating service with the second. When asked to identify stressful parts of their job, the tellers listed the need to keep too many things in their minds at once.[31]

Difficult working conditions that are disregarded.

The Pay Equity Commission of Ontario gave several examples of difficult working conditions in certain women's occupations that are virtually disregarded and whose difficult nature is not evaluated, much less compensated.

Secretaries

- Frequent interruptions in person or by telephone.
- Response to immediate, unplanned requests.
- Exposure to cathode rays that may lead to muscular pain or eye strain.
- Noisy environment due to open-concept work area: printers, telephones, conversations among coworkers.

Cashiers

- Exposure to risks associated with new technology like scanners.
- Continuous exposure to noise: cash register, clients, telephones.
- Constant interactions with a varied public, sometimes difficult or unhappy.
- Variable shifts.

Janitorial staff in commercial buildings

- Work outside of regular work hours.
- Use of cleaning products potentially harmful to health.

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[31] Ibid., p. 118.

- Higher risk of sexual harassment due to night work and isolation.
- Exposure to dust, dirt, waste.

Importance of pay equity committees that are representative.

This brief overview of evaluation factors and subfactors illustrates the importance of diverse membership on the pay equity committee, which should consist largely of representatives from different predominantly female job classes whose requirements are less well known and identified. The proposed Canadian Pay Equity Commission, described in Chapter 17, will have an important role in this respect.

> The responsible pay equity administrative body could provide examples as well as lists of skills needed in women's jobs that are often overlooked.
>
> Canadian Union of Public Employees (CUPE). Revised submission to the Pay Equity Task Force.
> November 2002, p. 6.

Degrees or Levels of Subfactors

Subfactors – Importance of degrees or scales of measurement.

An evaluation method involves not only factors and subfactors, but also degrees to measure the importance of each subfactor in every job class. These levels indicate intensity, frequency, duration, or other more qualitative characteristics. Physical effort, for example, may be measured in terms of one or more of the following aspects: frequency, duration, intensity, working position. Levels allow for differentiating job classes for each subfactor selected for the method.

Non-discrimination criteria have also been developed in this regard:

- Avoid systematically associating higher levels with predominantly male jobs versus predominantly female jobs. A ruling by the Pay Equity Hearings Tribunal of Ontario, in the Haldimand-Norfolk case[32], found one evaluation method to be sexist on that basis. The *responsibility for errors* subfactor gave higher levels for responsibility for errors that may affect the municipality's prestige (management jobs) than for errors that may affect bodily integrity (nursing jobs). In the same case, for the *external contacts* subfactor, contacts with the media regarding the image of the municipality were rated seven levels higher than routine contact with patients.

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[32] Haldimand-Norfolk, *supra*, note 5.

➤ Avoid systematically associating progression from one level to another with hierarchical progression or career progression.

➤ Plan for enough levels to reflect the requirements of both women's jobs and men's jobs. The following example shows how some evaluation methods are faulty in this respect. The *working conditions* factor was broken down into four levels described as:

- Level 1: normal working conditions in an office
- Level 2: indoor work with potential exposure to dirt, noise and chemical products
- Level 3: occasional exposure to unpleasant conditions: cold, wind, automobile exhaust fumes
- Level 4: constant exposure to unpleasant conditions: working outdoor on a regular basis.[33]

It will be noted that Level 1 does not even provide a short description of the working conditions in an office (women's jobs) whereas the other three levels describe working conditions more associated with blue-collar jobs (men's jobs).

Inclusive method of evaluation.

An inclusive method means the same attention and the same degree of detail must be given to predominantly female jobs as to predominantly male jobs. A special effort is thus required to look beyond longstanding practices and perceptions in the workplace that mask the reality of women's work.

10.1 The Task Force recommends that the new federal pay equity legislation provide that the pay equity committee must select an evaluation method that allows for equal evaluation of predominantly female and predominantly male job classes.

10.2 The Task Force recommends that the new federal pay equity legislation provide that the pay equity committee must select an evaluation method with four evaluation factors: qualifications, responsibility, effort and the conditions under which the work is performed.

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[33] Nan Weiner. (1991). "Job Evaluation Systems: A Critique." *Human Resource Management Review*. Vol. 1, No. 2, pp. 119-132.

> **When defining these factors and their subfactors, the pay equity committee must explicitly include all the specific requirements of predominantly female job classes.**

The role of the proposed Canadian Pay Equity Commission will be decisive in this regard, and it must quickly publish guides that clearly explain the meaning of a "gender-inclusive" evaluation method.

Evaluation Tools

Once the members of the pay equity committee agree on an evaluation method for the job classes, data must be collected on predominantly female and predominantly male job classes under the plan. A tool must be created to do so.

As the Pay Equity Hearings Tribunal of Ontario asserts, this is a crucial stage in the process:

> 132. The importance of an appropriate job content collection instrument cannot be underestimated. It is this instrument which determines whether the range of skill, effort, responsibility and the working conditions found in a job are captured. It allows you to make visible what is often invisible. In order to make work content visible, the questions and how they are asked is critical. This includes the wording used, the extent and range of questions asked, how much they take into account the specific aspects of women's work and the fact that these aspects have often been undervalued or invisible.[34]

Data collection tools must be inclusive.

Data collection tools must also reflect gender inclusiveness. Tools can include questionnaires, interviews, and so on. The data collection tool selected must truly allow for identification of the undervalued aspects of women's work.

> Job information should be collected from all employees through questionnaires, designated to capture all job elements. Employee interviews supplement this information.
>
> Canadian Union of Public Employees (CUPE). Revised submission to the Pay Equity Task Force, November 2002, p. 6.

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[34] *Women's College Hospital* (No. 4). (1992), 3 P.E.R. 61, paragraph 132.

Open-ended or closed-ended questionnaires.

Should the questionnaire be open-ended or closed-ended? An open-ended questionnaire generally allows for more detailed answers, but may result in gender differences. Research has in fact indicated that stereotypes regarding women's work are internalized by the women workers themselves and influence their way of describing their work.

In an open-ended questionnaire they will minimize certain job requirements by using moderate terms to describe their responsibilities, for example, *coordinating* instead of *directing*. An open-ended questionnaire may also favour job classes that require analysis and writing (professionals) compared with other job classes (cashiers or clerks) whose incumbents do not develop writing skills. To avoid these potential distortions, it is generally recommended that a mixed questionnaire be used—one which contains closed-ended questions, but with some room for comments where necessary.

Conditions required for an effective and inclusive data collection tool.

Other specific conditions have been identified to foster the quality, inclusiveness and neutrality of the data collection tool:

- the data collection tool must be standardized: different questionnaires cannot be used for different job classes that will then be compared to one another;
- the questions must be clear and specific to reduce the ambiguity of responses and to facilitate evaluation;
- questions must bear on the job rather than the incumbent; otherwise, job requirements may be confused with the incumbent's characteristics;
- data must be collected as accurately for predominantly female job classes as for predominantly male job classes;
- the vocabulary used must be understandable to all employees; thus, if a company's employees include an immigrant workforce, all workers must be able to answer the questionnaire properly, regardless of their command of the working language.

As a reminder, the pay equity committee should be able to refer to a list of characteristics for women's jobs that may be ignored or undervalued.[35]

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[35] The various pay equity commissions have published checklists which would assist committees in this regard.

Once the data collection tool is developed, stage two of the pay equity plan has ended and a posting must be made. It is crucial for the posting to take place at this time, not later. If employees dispute the content of the questionnaire, there will be time to modify it before it is distributed to respondents.

Administering the Questionnaire

Who will be asked to fill out the questionnaire? A relatively common practice in the workplace is for supervisors and human resource managers to describe the requirements and tasks of the occupations in a company.

Perpetuating prejudic and stereotypes.

In pay equity, this type of practice is not recommended as the responses may perpetuate prejudices and stereotypes. Incumbents must be asked these questions directly because it is they who best understand the details of their tasks.

> Many studies have noted that, despite supervisors' protestations to the contrary, incumbents of jobs provide the most accurate and most detailed information about their jobs. Thus a very useful source of job information is the employee.[36]

This is certainly the best way to identify the disregarded aspects of women's jobs. It is also a form of wider participation that leads to a better quality of results.

The questionnaire must be filled out for every gender predominant job class rather than only some. However, when one class has a very high number of incumbents, the questionnaire may be administered only to a sample of respondents.

Assigning Ratings to Job Classes

Crucial stage – assigning a level or rating to each subfactor.

Once the questionnaire is administered, the results are processed in such a way as to provide the members of the pay equity committee with a profile of each job class based on the factors and subfactors. The final stage of the evaluation then begins: job data is analysed and members of the pay equity committee assign a level (rating) to each subfactor for every gender predominant job class in the plan. This is a crucial stage of the process that repeatedly calls on the judgement of the members of the pay equity committee. The process selected must therefore be adequate to identify and avoid the effects of prejudices or misconceptions regarding certain job classes as much as possible. These may result from various phenomena, such as:

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[36] National Committee on Pay Equity. (1993). *Erase the Bias. A Pay Equity Guide to Eliminating Race and Sex Bias from Wage Setting Systems*. Washington, p. 33.

- the halo effect that occurs when an evaluator is influenced, for example, by the hierarchical level of the job classes he or she is evaluating or by its substantial requirements in terms of responsibility or qualifications;
- emotional biases that lead an evaluator to assign higher points to a job class whose incumbents are co-workers or members of the pay equity committee;
- the availability effect that refers to that which is most obvious in a job. For example, the most obvious aspect of secretarial work is the work in front of a computer screen, whereas other less obvious yet important aspects are ignored. The least familiar aspects have been found to be given little attention by evaluators and, consequently, they are given a lower rating.

> The legislation and/or guidelines must ensure that the evaluators themselves are as free from bias as possible in the manner in which they assess and rate the work. An excellent rating guide and evaluation methodology can be seriously undermined due to a lack of understanding of the principles of pay equity by the raters themselves [...].
>
> Public Service Alliance of Canada (PSAC). Final submission to the Pay Equity Task Force, November 2002, p. 15.

Adequately training members of the pay equity committee regarding potential biases can considerably reduce the likelihood of discriminatory influences during evaluation. A series of good practices have been developed in this respect.[37] The following caution should be noted in particular:

> The evaluation process is not a negotiation but a group discussion until a common position and a joint decision is reached.[38]

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[37] See in particular the documents produced by the Canadian Human Rights Commission, *supra*, note 27.

[38] Anita Harriman and Carin Holm, *supra*, note 22, p. 15.

Weighting

Assigning weights to factors and subfactors.

Weighting consists of assigning each factor and subfactor a relative weight in the overall evaluation method. The organization's mission becomes key at this point, and the members of the pay equity committee should have access to documents to allow them to properly identify the organization's values and objectives. The relative weight of the factors depends on the type of occupations and the organization's mission. For example, in a hospital it will be logical to assign a higher relative weight to *responsibility for people* whereas at a software development company, technical skills will be of particular importance.

Weighting is crucial for fair evaluation.

Weighting is a determining stage for the final value of job classes and may cancel out all the effort made to date to achieve a discrimination-free evaluation. For example, although the disregarded aspects of women's work may have been identified and measured properly, assigning those aspects a relatively low weight will also lessen the final value of predominantly female job classes. In order to ensure the weighting grid is as non-discriminatory as possible, committee members must verify that a higher weight is not systematically assigned to predominantly male job classes than to predominantly female job classes.

Given the key importance of weighting, a good pay equity practice would be to leave this operation until the very end of the process. Indeed, in pay equity, knowledge of a subfactor's relative weight must not influence decisions by committee members. To respect the objectivity requirement, the weighting grid must be established only after every job class is assigned a level deemed appropriate for each of its subfactors.

Once the pay equity committee adopts the weighting grid, it may then calculate the point value of predominantly female and predominantly male job classes, which allows for establishing equivalences and for proceeding to the next stage, that of wage comparisons.

10.3 The Task Force recommends that the new federal pay equity legislation provide that the pay equity committee must ensure that the following elements are developed and applied without gender discrimination:

- **the content of the evaluation method;**
- **the tools for collecting data on job classes;**
- **the evaluation process for job classes; and**
- **the weighting grid.**

Proactive pay equity legislation can neither detail the stages of job evaluation nor provide a complete list of good practices for achieving a rigorous, non-discriminatory evaluation. That is where the proposed Canadian Pay Equity Commission comes into play: the Commission must quickly provide detailed direction and guides in this respect.

The Implications of A Single Pay Equity Plan

One pay equity plan for each organization.

In Chapter 6 we recommended adopting a single pay equity plan for all gender predominant job classes in an organization. Earlier we also explained how evaluation methods were originally created only for certain job families within an organization. This segmented approach continues to influence company practices. However, it is counter to the objective of pay equity, which is to eliminate systemic discrimination against predominantly female jobs compared with predominantly male jobs as a whole. By restricting comparisons to a selection of jobs that is not representative of the wide range of jobs in that organization, only part—perhaps only a small part—of the wage discrimination can be eliminated.

Single job evaluation method.

The issue here is whether, in practice, a single evaluation method allows for effective evaluation of a wide range of jobs in a given organization, especially a large organization. Though it may seem unlikely at first, many experiences with a single evaluation method have been successful. For example, in Manitoba, the principle of a single plan per employer was applied to all gender predominant job classes in the Public Service belonging to various associations and including clerical work, professions and trades. The wage gap narrowed substantially, as a report on the process states:

> It should be noted that pay equity implementation resulted in a significant reduction of the wage gap within the civil service, this is particularly apparent for workers who were members of the Manitoba Government Employees Association (MGEA) where the gender wage gap was decreased by 50% through the pay equity process. This further shows that women's occupational segregation into traditionally women's jobs which are undervalued is by far the most important factor influencing the wage gap and that pay equity is an effective means of reducing the impact of this factor.[39]

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[39] Manitoba Civil Service Commission. (1988). *Pay Equity Implementation in the Manitoba Civil Service*, p. 39.

Note that at the federal level, the JUMI (Joint Union Management Initiative) also applied to most jobs in the Public Service.

Meiorin case and inclusiveness.

In Quebec, in accordance with the *Pay Equity Act*, many private-sector employers also adopted a single evaluation plan for all gender predominant job classes even though their organizations had a wide range of very different occupations and several certification units. We also saw that in Europe, evaluation methods are designed to evaluate all the jobs in an organization regardless of how diverse they are. All this supports the view that a single evaluation plan is not only important to the achievement of pay equity; it is also possible. It might even be asked whether the use of separate evaluation methods is compatible with the following criterion of inclusive practices affirmed by the Supreme Court in the Meiorin ruling:

> 68. Employers designing workplace standards owe an obligation to be aware of both the differences between individuals, and differences that characterize groups of individuals. They must build conceptions of equality into workplace standards. By enacting human rights statutes and providing that they are applicable to the workplace, the legislatures have determined that the standards governing the performance of work should be designed to reflect all members of society, in so far as this is reasonably possible. Courts and tribunals must bear this in mind when confronted with a claim of employment-related discrimination. To the extent that a standard unnecessarily fails to reflect the differences among individuals, it runs afoul of the prohibitions contained in the various human rights statutes and must be replaced. The standard **itself** is required to provide for individual accommodation, if reasonably possible. A standard that allows for such accommodation may be only slightly different from the existing standard but it is a different standard nonetheless.[40]

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[40] *British Columbia (Public Service Employee Relations Commission)* v. *British Columbia Government and Service Employees Union* (BCGSEU), [1999] 3 S.C.R. 3 (l'affaire Meiorin), para. 68.

Admittedly, however, in some cases a single evaluation plan may not seem possible at first sight. Recently, the Treasury Board of Canada Secretariat had planned to establish a general classification standard with a single evaluation tool for all, or almost all, occupations in the federal Public Service. The project was eventually abandoned in favour of separate classification standards.

> *The efforts to develop a single classification plan covering all federal public jobs has failed.* Clearly a single classification plan covering diverse work undertaken in the federal public service is not feasible nor desirable. *Furthermore, the size and diversity of the federal public service rendered the development of a single classification scheme a monstrous undertaking that in the end, would have resulted in many more problems than it set out to resolve.*
>
> Professional Institute of the Public Service of Canada. Submission to the Pay Equity Task Force, November 7, 2002, p. 2.

Implications of separate classification plans.

Professors Paquet and Lequin rightfully stress the implications of adopting separate standards in a pay equity context. In their view, the problem with separate classification plans is the following:

> This new reform raises the issue of cross-standard comparisons, for which tools must be developed. Without such tools, it is difficult to determine whether, for example, the female-dominated *Program and Administration Services Group* is the object of wage discrimination compared to the *Technical Services Group* or the *Financial Management Group* (FI), both of which are male-dominated. That is why we believe this type of comparison tool must be designed early in the process of developing new classification standards.
>
> Renaud Paquet and Jacques-André Lequin. (2003). *Interrelations between Labour Relations Processes and Pay Equity: The Specific Case of the Federal Public Service.* Unpublished research paper commissioned by the Pay Equity Task Force, p. 7.

These comments explain the reason for a single plan, that is, the ability to compare all jobs for a given employer. Later on the authors note:

> But wasn't the purpose of the legislation initially to correct the lack of pay equity within an enterprise by ensuring equal pay for work of equal value for both genders? We believe the only way to achieve this objective is to require comparisons between bargaining units. This was also one of the UCS's [Universal Classification Standard] noble objectives.
>
> Renaud Paquet and Jacques-André Lequin. (2003). *Interrelations between Labour Relations Processes and Pay Equity: The Specific Case of the Federal Public Service.* Unpublished research paper commissioned by the Pay Equity Task Force, p. 8.

Moreover, Paquet and Lequin indicate that, in particular, cross-standard comparison tools would have to be developed jointly at a master bargaining table, as would the number and boundaries of the classification standards.

Other alternatives where a single plan is not feasible.

These reflections on the Public Service may be applied to other organizations. They show that where it is impossible to implement a single plan, the employer must find an alternative solution such as a cross-plan comparison tool. The proposed Canadian Pay Equity Commission will have to develop approaches that those in charge of implementing pay equity can use to conduct such a comparison.

Conclusion

This chapter set out the principal elements of the stage of job class evaluation. As we have seen, it consists of a series of separate yet highly interdependent operations. Jurisprudence and considerable research have led to the development of numerous non-discriminatory evaluation criteria. Beyond the technical aspects, which are present throughout the process, those in charge of pay equity must be guided by a key principle: making the various facets of women's work visible, effectively measuring that work and evaluating it equitably in comparison with men's work.

Chapter 11 – Estimating and Correcting Wage Gaps

Final stage in developing a pay equity plan.

The estimation and correction of wage gaps, which follow the evaluation of gender-predominant job classes, mark the final stage in developing a pay equity plan. This is the point at which the wage gaps between equivalent jobs are estimated and the resulting adjustments and terms of payment determined. In this chapter, we will first examine what compensation a pay equity plan should cover. We will then examine the various comparison methods for estimating wage gaps between predominantly female job classes and their male equivalents.

Several questions arise regarding compensation:

- What elements should be included in compensation, and how?
- How should wage gaps be estimated?
- How should wage adjustments be made?

Compensation

Systemic wage discrimination can be subtle and indirect.

In pay equity, compensation issues appear to be the most technical in nature and those in charge of pay equity tend to leave these issues to the experts. However, as we indicated in Chapter 8, the parties who best understand the concepts and tools sometimes make the technical choices which support their own political or economic agenda. This is another reason why the members of the pay equity committee will need appropriate training to identify and avoid the potentially discriminatory effects of their decisions.

> It is not enough to superficially review wage structures for clear manifestations of provisions that directly discriminate against women. Wage discrimination operates in more subtle, indirect but no less harmful ways as well [...].
>
> Melina Buckley. (2003). *Prospects for the Mediation of Pay Equity Matters within Federal Jurisdiction.* Unpublished research paper commissioned by the Pay Equity Task Force, p. 4.

Approaches in Canadian Jurisdictions

"Compensation" is usually broadly defined in pay equity legislation.

For the purpose of estimating wage gaps, "compensation" is generally defined quite broadly, though with varying levels of detail, in all jurisdictions with pay equity legislation.

The *Canadian Human Rights Act*[1] defines "wages" as the equivalent of total compensation, of which it provides several examples:

> 11. (7) For the purposes of this section, "wages" means any form of remuneration payable for work performed by an individual and includes
>
> (a) salaries, commissions, vacation pay, dismissal wages and bonuses;
>
> (b) reasonable value for board, rent, housing and lodging;
>
> (c) payments in kind;
>
> (d) employer contributions to pension funds or plans, long-term disability plans and all forms of health insurance plans; and
>
> (e) any other advantage received directly or indirectly from the individual's employer.

Manitoba's proactive legislation[2] also defines "wages" as total compensation, but without listing what this includes:

> 1. "Wages" means any form of remuneration payable or benefit provided by an employer for work performed by an individual and "wage" or "wage rate" has a corresponding meaning.

Ontario's *Pay Equity Act*[3] resembles Manitoba's legislation:

> (1) In this Act,
>
> [...]
>
> "compensation" means all payments and benefits paid or provided to or for the benefit of a person who performs functions that entitle the person to be paid a fixed or ascertainable amount.

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[1] Canada. *Canadian Human Rights Act.* R.S.C. 1985, c. H-6.

[2] Manitoba. *Pay Equity Act.* 1985-86. C.C.S.M. c. P13.

[3] Ontario. *Pay Equity Act.* R.S.O. 1990. c. P. 7.

as does Prince Edward Island's[4]:

> 1(m) "Wages" means all forms of pay and benefits paid or provided, directly or indirectly, by or on behalf of an employer to or for the benefit of an employee and include the relevant salary scales.

Nova Scotia's legislation[5] also provides a general definition of "pay," but introduces a number of exclusions:

> "pay" means salary or compensation of an employee in respect of employment but does not include benefits such as the value of living and residential allowances, automobile allowances, clothing allowances, gratuities, overtime or payments in lieu of overtime (paragraph 3(1)(o))

New Brunswick[6] is the exception and defines "pay" restrictively:

> "pay" means straight-time wages and salary. (subsection 1(1))

Quebec's legislation[7] is very specific regarding the content of total compensation, which includes flexible pay (section 65) and benefits (section 66):

> 65. For the purposes of the valuation of differences in compensation, remuneration includes flexible pay if it is not equally available to all the job classes that are the subject of the comparison.
>
> Flexible pay includes merit and performance pay and income from gain-sharing schemes.
>
> 66. Where benefits having pecuniary value are not equally available to all the job classes that are the subject of the comparison, the value thereof must be determined and must be included in the remuneration for the purpose of determining differences in compensation.
>
> Benefits having pecuniary value include, in addition to indemnities and bonuses,
>
> 1) the various forms of paid leave including sick leave, family-related and parental leave, vacation and holidays, rest and meal periods and other benefits of that nature;

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[4] Prince Edward Island. *Pay Equity Act.* R.S.P.E.I. 1988, c. P-2.

[5] Nova Scotia. *Pay Equity Act.* R.S.N.S. 1989, c. 337.

[6] New Brunswick. *Pay Equity Act.* R.S.N.B. 1989, c. P-5.01.

[7] Quebec. *Pay Equity Act.* R.S.Q. 1995, c. E-12.001.

2) retirement and group protection plans including pension funds, health and disability insurance and other group plans of that nature;
3) non-salary benefits including the supply and maintenance of tools and uniforms or other clothing, except where required under the Act respecting occupational health and safety (chapter S-2.1) or except where the uniforms or other clothing are a job requirement, parking privileges, meal allowances, the supply of vehicles, payment of professional dues, paid educational leave, reimbursement of tuition fees, low-interest loans and other benefits of that nature.

For almost all jurisdictions, total compensation includes flexible pay and monetary benefits.

As the above review of Canadian pay equity legislation shows, every law, except that of New Brunswick, adopts a broad definition of total compensation that includes flexible pay and monetary benefits.

The *Canadian Human Rights Act* stipulates, under subsection 11(7), that employer contributions shall be used to evaluate group pension or insurance plans. This is the only Canadian legislation, however, that provides this level of detail on how to estimate benefits or flexible pay for pay equity purposes.

Finally, Quebec's legislation is the most specific with respect to the components of flexible pay and monetary benefits, which it lists in a relatively detailed manner.

Total Compensation

Many of the submissions and research papers presented to the Task Force provide support for using "total compensation" as the definition of "compensation" for pay equity purposes. This corresponds to what employers are ready to pay, in actual workplaces, for the productive contribution of employees.

> [TRANSLATION] The concept of compensation must include all forms of compensation including benefits with monetary value. Equality of access to the various benefits must be given as much consideration as the equality of outcomes.
>
> Confédération des syndicats nationaux (CSN). Submission to the Pay Equity Task Force, June 2002, p. 10.

> Wage calculations must include basic salaries as well as fringe benefits, including pension plans, various leaves and other benefits such as parking, meal and car allowances, and uniforms.
>
> National Association of Women and the Law (NAWL). Brief to the Pay Equity Task Force, December 2002, p. 32.

It must be recognized, however, that use of the concept of total compensation poses challenges:

> One of the most challenging issues is estimating the value of the entire compensation package of employees. The usage and variability of types of compensation and benefits across jobs has increased over the past several decades. Firms utilize variable or contingent pay schemes in order to better link pay to productivity. Non-standard pay methods such as individual incentives, gain sharing and profit sharing, and merit pay plans can add variance to earnings within job classes that have, for example, standardized wages.
>
> Richard P. Chaykowski. (2002). *Implementing Pay Equity in the Context of Emerging Workplaces and Employment Relationships*. Unpublished research paper commissioned by the Pay Equity Task Force, p. 31.

These comments show the need for an appropriate methodological framework for the wage adjustment phase of the pay equity process both under the legislation and under any guidelines or regulations which may be used by the proposed Canadian Pay Equity Commission, described in chapter 17.

11.1 The Task Force recommends that the new federal pay equity legislation define compensation for pay equity purposes as total compensation, including base pay, flexible pay and benefits with monetary value.

Calculating Total Compensation

The following elements—salary ranges, flexible pay and monetary benefits—must be considered in calculating total compensation.

Salary Ranges

Basic salary is the first element that must be determined. ("Basic salary" refers here to the basic salary of the job class, not of the incumbents.) If there is a salary range, however, which pay level should be used?

Flat rate of pay and salary ranges.

When a job class is paid on a flat-rate basis, the choice is clear: the flat rate will be used for the comparison. However, where a salary range exists, a reference point must be established for comparison purposes. Should the highest, the middle or the lowest pay level of a salary range be used? According to pay systems specialists,[8] the maximum rate is the one considered as the job rate. Indeed, this is the salary paid to a person who has mastered all the skills necessary for the position. This is why Quebec's *Pay Equity Act,* which is quite specific on this point, stipulates that the maximum pay level is the one deemed to be the job rate.

Where no formal pay scale exists, but the various jobs within a class are paid different rates that reflect a progression based on experience, seniority or any other non-discriminatory criterion, the maximum rate is the reference, for the reasons cited above.

11.2 The Task Force recommends that the new pay equity legislation define pay for a job class as the maximum flat rate or the maximum pay level in a salary range for the jobs in that class.

Flexible Pay

Types of flexible pay.

Flexible pay covers a wide range of practices, including:

- Skills-based compensation.
- Plans based on individual performance, such as merit pay, bonuses and commissions.
- Plans based on group performance, such as profit sharing, sharing in productivity gains, and the granting or purchase of shares or stock options.[9]

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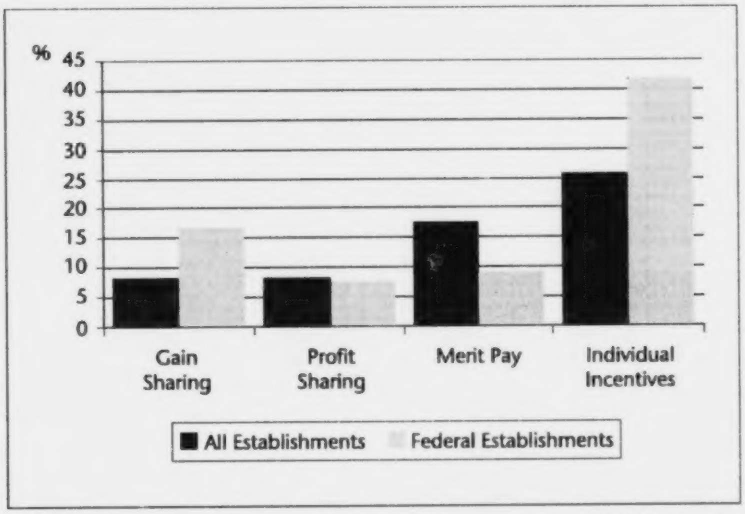
[8] See Roland Thériault and Sylvie St-Onge. (2000). *Gestion de la rémunération : Théorie et pratique.* Montreal: Gaëtan Morin.

[9] Ibid.

Flexible pay must be included when calculating wage gaps, since it is part of compensation and excluding it may have a discriminatory impact.

As shown in Figure 1, some type of variable pay plan is found in a number of unionized establishments, with individual incentives being the most common. With respect to federal establishments, a larger proportion have gain sharing and incentive pay relative to other establishments, about the same proportion have profit sharing, and a smaller proportion provide merit pay.

Figure 1: Proportion of Unionized Establishments with Variable Pay, 1999



Note: Data is from Statistics Canada's *Workplace and Employee Survey*, 1999. This survey does not include the public sector and does not specifically identify federal jurisdiction establishments.

Source: Richard P. Chaykowski. (2002). *Achieving Pay Equity under a Transformed Industrial and Employment Relations System.* Unpublished research paper commissioned by the Pay Equity Task Force, Figure 5, p. 29.

Figure 2 shows the distribution of individual incentives which are paid to various groups of employees in unionized establishments, particularly managers and sales staff.[10]

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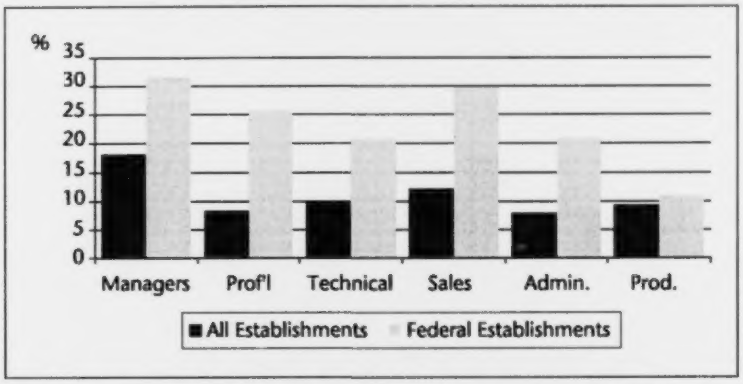
[10] The data are for unionized establishments and do not mean that all employees in the database are unionized. This detail concerns mainly management. The limitations of this database are, in particular, the fact that only private-sector employers are included and that it is impossible to directly identify employers under federal jurisdiction.

Figure 2: Proportion of Unionized Establishments with Individual Incentives by Employee Category, 1999



Note: Data is from Statistics Canada's *Workplace and Employee Survey, 1999*. This survey does not include the public sector and does not specifically identify federal jurisdiction establishments.

Source: Richard P. Chaykowski. (2002). *Achieving Pay Equity under a Transformed Industrial and Employment Relations System*. Unpublished research paper commissioned by the Pay Equity Task Force, Figure 6, p. 30.

From the perspective of pay equity implementation, the payment of this form of compensation may make pay plans less transparent for employees.[11] Including flexible pay means that the employer must provide the members of the pay equity committee with all the information they need to make a knowledgeable decision and to avoid including discriminatory elements in their decisions. This is one example of one type of information that should be made available by the employer as we suggested in Chapter 8.

Quebec approach to handling flexible pay.

How can flexible pay and its components be taken into account? Quebec's legislation proposes a sequential approach:

- Is the flexible pay plan accessible equally to all job classes being compared?
- If so, it is not necessary to include it in compensation for the purposes of estimating wage gaps.
- If not, it must be estimated and included.

One option with this approach is simply to make the flexible pay plan available to the predominantly female job classes that do not have access to it.

According to Nadine Winter, an expert in compensation, the principle of equal access falls short in the context of pay equity:

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[11] M.-T. Chicha. (1999). "The Impact of Labour Market Transformations on the Effectiveness of Laws Promoting Workplace Gender Equality." In Richard P. Chaykowski and Lisa M. Powell (Eds.), *Women and Work*. Kingston: McGill-Queen's University Press, pp. 283-304.

> We would not recommend exclusion of any form of compensation on the equal availability of its provision to female job classes and male job classes. Equal access does not automatically translate into equal opportunity to earn. Clarity and integrity in program design is also required; that is, it needs to be documented and communicated to the employees affected. *In addition, the actual application or impact of the compensation program provided has to be gender-neutral* [our emphasis].
>
> Nadine Winter. (2003). *Treatment of Cash Compensation in Pay Equity Comparisons.* Unpublished research paper commissioned by the Pay Equity Task Force, p. 23.

As the above passage indicates, it is necessary to ensure that there is genuine equity in the use of flexible pay. This requires considering not only whether formal criteria provide that superior performance will be rewarded in predominantly female job classes to the same degree as predominantly male job classes, but also whether a performance-based system is equitable in its actual application.

The concept of equal access should be interpreted inclusively:

- Does the flexible pay plan reward superior performance in predominantly female job classes to the same degree that it does in predominantly male job classes?
- If so, is it in fact applied inclusively?[12]

> International human rights instruments and domestic equality jurisprudence both recognize that achieving equality requires transforming entrenched patterns of remuneration to develop gender-inclusive pay practices. In order to strengthen pay equity legislation it is necessary to tailor new legislation to address the systemic nature of the pay inequity problem and to require transformation at a systemic level. Only a legislative scheme that is comprehensive and proactive can effectively strike at the systemic nature of wage discrimination.
>
> Mary Cornish, Elizabeth Shilton and Fay Faraday. (2002). *Canada's International and Domestic Human Rights Obligations to Ensure Pay Equity: Obligations to Design an Effective, Enforceable and Proactive Federal Pay Equity Law.* Unpublished research paper commissioned by the Pay Equity Task Force, p. 48.

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[12] See Mary Cornish, Elizabeth Shilton and Fay Faraday. (2002). *Canada's International and Domestic Human Rights Obligations to Ensure Pay Equity: Obligations to Design an Effective, Enforceable and Proactive Federal Pay Equity Law.* Unpublished research paper commissioned by the Pay Equity Task Force.

If the members of the pay equity committee have any doubts regarding the gender inclusiveness of a flexible pay system, they can verify inclusiveness using indicators such as frequency of attribution compared by job category or relative amount of compensation.

Estimating flexible pay.

If flexible pay must be estimated for inclusion in total compensation, how should it be estimated? As Winter points out, estimation is that much more difficult because the amounts are unforeseeable and irregular.

> The inclusion of variable pay forms of compensation, for example, can mean variable differences in wage gaps from one year to the next. It cannot be assumed that variable pay programs have regular or annual payouts [...].
>
> Nadine Winter. (2003). *Treatment of Cash Compensation in Pay Equity Comparisons.* Unpublished research paper commissioned by the Pay Equity Task Force, p. 24.

Winter accordingly examines three options:

- One view might be that *the lowest amount of variable compensation actually earned by an incumbent in the job class* represents the threshold of actual earnings that all employees in the job class received; that is, the lowest amount earned represents what was actually attainable by all incumbents.
- An alternative view might be *that the maximum level of variable earning by an incumbent in the job class* be applied. The logic for this application would be one of consistency with the definition of *pay equity job* rate for base pay, which we have suggested to be the maximum rate of compensation, and that this represents the real maximum earning potential under the program being examined.
- A third option would focus on what best represents the actual earnings received by the job class as a whole. Here, *an average rate of actual earnings or, better still, a median or weighted-average of actual earnings,* is a better fit. Low and high performers under a short-term incentive program, for example, would not skew the level of compensation used for making pay equity comparisons and the median or weighted average would better represent what a majority of

> the incumbents in the job class actually received in variable pay earnings.[13] [Our emphasis].

Winter supports the third option, being the median or weighted average of the actual flexible pay by job class.

Using total compensation has positive aspects.

The obligation to include total compensation may in some cases require substantial work. However, as Winter points out, it has a positive impact on the quality of management practices in the organization:

> In our experience, we have found that the requirement for employers to implement pay equity has forced numerous organizations to re-examine their pay practices to determine whether they pay employees in all job classes in a systematic and fair manner.
>
> Nadine Winter. (2003). *Treatment of Cash Compensation in Pay Equity Comparisons*. Unpublished research paper commissioned by the Pay Equity Task Force, p. 1.

Research conducted by Louise Boivin, a job evaluation expert, leads her to agree, even with respect to small businesses:

> Most heads of enterprise were concerned about the obligation to formally define the components of remuneration. In smaller enterprises (particularly VSEs), the lack of a formal wage structure may certainly explain this worry. Heads of enterprise must not only identify informal and sometimes arbitrary remuneration practices, but must also systemize their practices. [...]
>
> Instead, pay equity implementation is an opportunity to lay the foundation for an initial wage structure.
>
> Note: VSEs are very small enterprises.
>
> Louise Boivin. (2002). *Implementing Pay Equity in Small-to-Medium-Sized Enterprises*. Unpublished research paper commissioned by the Pay Equity Task Force, p. 49.

In sum, we find that the approaches taken in various pay equity statutes and the opinions expressed by experts all point in the same direction, indicating that total compensation is the concept that should be used. If pay adjustments are limited simply to equalizing basic salary rates, there is a risk that benefits and flexible pay, which are two important components of employee compensation, will continue to be affected by discrimination. The detrimental effects of such an approach would be all the more serious in that these components tend to account for a substantial part of total compensation for many workers. Moreover, as a number of pay equity practitioners have pointed out, adopting the broader approach of total compensation allows employers to rationalize their pay systems, which is a worthwhile side effect in itself.

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[13] Nadine Winter. (2003). *Treatment of Cash Compensation in Pay Equity Comparisons*. Unpublished research paper commissioned by the Pay Equity Task Force, p. 25.

11.3 The Task Force recommends that the new federal pay equity legislation provide that for the purposes of estimating wage gaps, flexible pay includes:

- **skills-based compensation;**
- **plans based on individual performance, such as merit pay and bonuses; and**
- **plans based on group performance, such as profit sharing and sharing in productivity gains.**

Proposed Canadian Pay Equity Commission needs to develop guidelines for estimating flexible pay.

The proposed Canadian Pay Equity Commission will need to develop guidelines on the content of flexible pay and the methods for estimating it. We favour estimating wage gaps on the basis of average actual earnings over a relatively long period. The length of that period will be determined in part by the presence of unusual fluctuations (for example, an economic crisis that causes a drastic, but temporary, drop in sales).

Monetary Benefits

Monetary benefits are those nonwage components of compensation to which a monetary value can be attached. They include a wide range of elements such as leave, various types of group insurance, reduced-rate loans, and free parking.

According to Monica Townson, benefits represent a substantial proportion of total compensation—sometimes accounting for up to 20 to 25 percent[14]—which is why these types of benefits must be properly taken into account under a pay equity plan. Moreover, as Richard Chaykowski remarks, benefits are becoming increasingly significant.

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[14] Monica Townson. (2002). *The Treatment of Non-Wage Benefits in Pay Equity Comparisons.* Unpublished research paper commissioned by the Pay Equity Task Force, p. 28.

> Non-wage benefits are, generally, an increasingly important component of total compensation. The number and prevalence of the types of benefits has increased over the past several decades, and may include pension plan, life insurance, supplemental medical and dental care, a group RRSP, stock purchase plans, maternity-layoff benefits, and other benefits.
>
> Richard P. Chaykowski. (2002). *Implementing Pay Equity in the Context of Emerging Workplaces and Employment Relationships.* Unpublished research paper commissioned by the Pay Equity Task Force, p. 32.

As a result of a diverse and changing workforce, nonwage benefit packages have become more flexible to accommodate for child care or care of elderly parents, flextime, and sabbaticals, to name a few.

Some organizations have introduced cafeteria style or flexible benefit plans that allow employees to choose a combination of benefits that best suit their individual needs. Usually, the employer provides a fixed amount of dollars for these benefits, and anything above this amount must be paid by the employee. Employers sometimes assign a total credit, usually ranging from $200 to $2,500 which employees can use to purchase the benefit package of their choice.[15]

This trend points to diversification but also makes it possible to identify the cost of benefits, even new ones.

Their distribution seems to follow occupational segregation and to disadvantage women:

> Gender gaps in benefits associated with the segregation of workers into male and female jobs are significant and occur across a range of non-wage benefits.[16]

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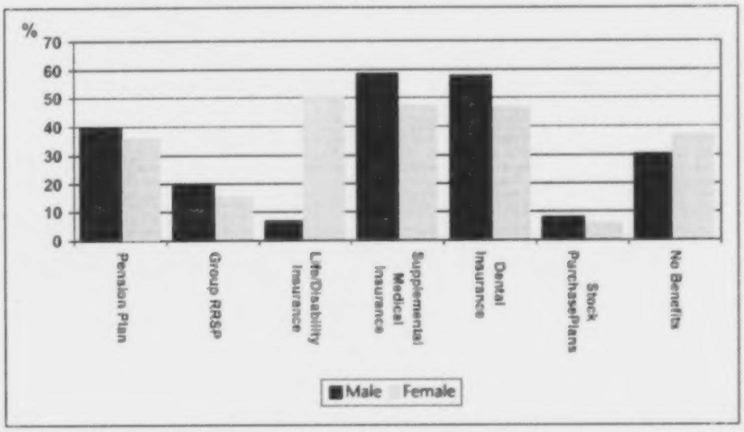
[15] Ibid., p. 8.

[16] Janet Currie and Richard Chaykowski. (1995). "Male jobs, Female Jobs, and Gender Gaps in Benefits Coverage in Canada." *Research in Labor Economics.* Vol. 14, p. 174.

Figure 3 shows that proportionately fewer women than men benefit from most principal group plans in the workplace, with the exception of life insurance and disability insurance. Relative to men, a proportionately higher level of women have no benefits coverage at all in the workplace.

Figure 3: Proportion of Employees Included in Benefit Plans by Sex, 1999



Note: Data used is from Statistics Canada's *Workplace and Employee Survey Compendium.*

Source: Richard P. Chaykowski. (2002). *Implementing Pay Equity in the Context of Emerging Workplaces and Employment Relationships.* Unpublished research paper commissioned by the Pay Equity Task Force, p. 35.

Gender breakdowns by workplace size also show women are less likely than men to have benefits. In workplaces with 500 or more employees, only 65 percent of women compared with 83 percent of men have a supplementary medical insurance plan, while 72 percent of women compared with 79 percent of men have an employer-sponsored pension plan.

Monica Townson. (2002). *The Treatment of Non-Wage Benefits in Pay Equity Comparisons.* Unpublished research paper commissioned by the Pay Equity Task Force, p. 21.

One determining factor is worker status. Workers in non-standard employment situations (fixed-term contracts, on-call, part-time) appear to have less access to such benefits.

Non-standard employment has increased considerably in the past 20 years and more women than men hold these types of jobs.

In 1999, 41 percent of women workers aged 15 to 65 held non-standard employment compared with 29 percent of men.[17] An increase in non-standard employment has also been noted in the sector under federal jurisdiction. As Monica Townson remarks, in the Public Service, 24 percent of women compared with 14 percent of men hold non-standard employment.[18] These figures are likely underestimated since they include neither contract workers nor workers from temporary employment agencies.

More women employed in non-standard employment.

According to Baker and Gunderson,[19] one form of non-standard employment is more frequent in the sector under federal jurisdiction than in others, that of fixed-term contracts. Research by these authors confirms that more women than men are employed in non-standard work in all sectors.

According to Brenda Lipsett and Mark Reesor, non-standard employment creates an obstacle to accessing monetary benefits:

> It has been suggested that non-standard employment is one way for employers to circumvent the increased trend in non-wage labour costs since, historically, non-standard workers have not received most benefits. In a changing workplace environment, where part-time and non-permanent workers provide flexibility to respond to the daily, weekly, annual and cyclical variations in demand (contingent and peripheral employment), where employers wish to reduce labour costs or shift these costs from fixed to variable, and where they may be less concerned about incentives to reduce turnover and increase work effort, we would expect that these part-time and non-permanent workers are less likely to have extended health, dental or pension coverage than permanent full-workers.[20]

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[17] Statistics Canada. *Women in Canada 2000: A gender-based statistical report*, p. 110. The Statistics Canada definition of "nonstandard employment" includes part-time work, short-term employment, self-employment and multiple jobs.

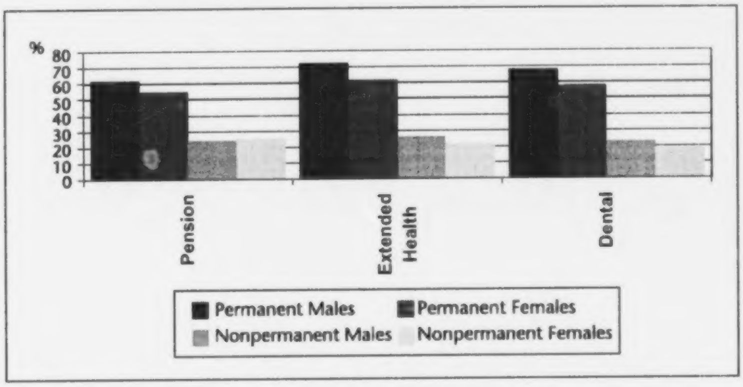
[18] M. Townson, *supra*, note 14, p. 22.

[19] Michael Baker and Morley Gunderson. (2002). *Non-Standard Employment and Pay Equity.* Unpublished research paper commissioned by the Pay Equity Task Force, Table 1A, p. 33.

[20] Brenda Lipsett and Mark Reesor. (1999). "Women and Men's Entitlement to Workplace Benefits: The Influence of Work Arrangements." In Richard P. Chaykowski and Lisa M. Powell (Eds.), *Women and Work.* Kingston: McGill-Queen's University Press, p. 56.

As Figure 4 shows, benefit coverage is, on average, much higher for men than for women regardless of their employment status.

Figure 4: Proportion of Employees Covered by Pension, Health and Dental Plans by Employment Status and Sex, 1995



Note: Based on data from Statistics Canada's 1995 *Survey of Work Arrangements*.

Source: Richard P. Chaykowski. (2002). *Implementing Pay Equity in the Context of Emerging Workplaces and Employment Relationships*. Unpublished research paper commissioned by the Pay Equity Task Force, Figure 9, p. 38.

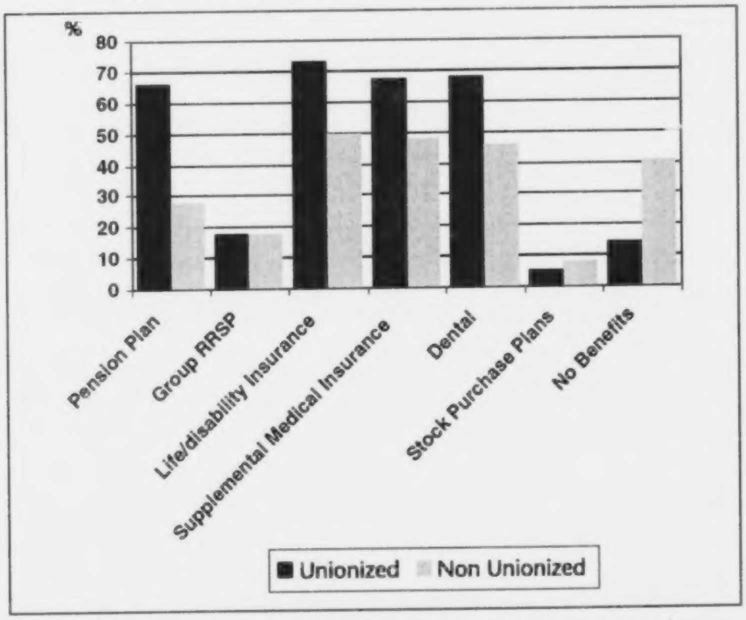
These findings are of great interest in pay equity, since permanent employees and workers with unstable jobs usually work side by side, sometimes even in the same occupations. The same pay equity plan may therefore cover both permanent employees who enjoy a wide range of benefits, and workers with precarious jobs, who are mainly women, and who may not have access to the same range of benefits.

Being unionized also results in better benefit coverage.

> There is considerable evidence that unionized workers are much more likely to have non-wage benefits than employees who do not belong to a union. For example, analysis of three types of benefits programs – medical, dental, and life or disability plans – together with employer-sponsored pension plans, found that coverage rates for unionized workers in the three insurance plans were approximately double those of non-unionized workers (80% versus 40%). [...] A majority of unionized employees enjoyed coverage under all three insurance plans, while a majority of non-unionized employees had no coverage under any plan.
>
> Monica Townson. (2002). *The Treatment of Non-Wage Benefits in Pay Equity Comparisons.* Unpublished research paper commissioned by the Pay Equity Task Force, p. 12.

As Figure 5 illustrates, proportionately fewer non-unionized employees enjoy various benefits, except for RRSPs, where they are fairly close to unionized employees, and stock purchases, where they are favoured.

Figure 5: Proportion of Employees Included in Benefit Plans by Union Status, 1999



Source: Richard P. Chaykowski. (2002). *Implementing Pay Equity in the Context of Emerging Workplaces and Employment Relationships.* Unpublished research paper commissioned by the Pay Equity Task Force, p. 40.

Finally, there are also differences among occupations, as well as gender-based differences within occupations:

> Differences between women and men vary quite widely. Among professionals, for example, about 60 percent of both women and men have an employer-sponsored pension plan, but only 59 percent of women compared with 72 percent of men have a dental plan. Among clerical workers, 42 percent of women compared with 51 percent of men have a pension plan, while 53 percent of women compared with 68 percent of men have a supplementary medical insurance plan.
>
> Monica Townson. (2002). *The Treatment of Non-Wage Benefits in Pay Equity Comparisons.* Unpublished research paper commissioned by the Pay Equity Task Force, p. 21. (Calculations are based on data from Statistics Canada's *Workplace and Employee Survey,* which excludes the public sector and does not distinguish between organizations that are under federal jurisdiction and those that are not.)

Women workers are disadvantaged in terms of non-wage benefits.

The data examined indicate that women workers are disadvantaged in terms of non-wage benefits and that this correlates with employment status, union membership and occupational group. This disadvantage results from disparities within organizations and clearly illustrates the need to eliminate discrimination by taking into account all non-wage benefits when calculating compensation. These data do not always allow for the proper identification of sectors under federal jurisdiction.

> Only limited data are available on non-wage benefits covering employees under federal jurisdiction. However, it would be reasonable to assume that over the past 25 years, federally-regulated employers have experienced the same kind of developments in non-wage compensation as all other employers.
>
> Monica Townson. (2002). *The Treatment of Non-Wage Benefits in Pay Equity Comparisons.* Unpublished research paper commissioned by the Pay Equity Task Force, p. 11.

Thus, it may safely be stated that the trends observed in the preceding sections can be found at the federal level. The pay equity committee in every organization will be responsible for identifying these trends and their impact on the estimation of wage gaps between the job classes of the pay equity plan they are overseeing.

Including Monetary Benefits in Wage Comparisons

An inclusive definition of compensation is supported by stakeholders and researchers.

As mentioned earlier, many stakeholders and researchers support a comprehensive and inclusive definition of compensation. Two research papers commissioned by the Task Force in this regard stress the need to take into account, as completely as possible, all monetary benefits as part of pay equity.

> It seems evident that, if the objective of pay equity is to ensure that women and men receive equal pay for work of equal value, non-wage benefits should be included in pay equity comparisons to the fullest extent possible.
>
> Monica Townson. (2002). *The Treatment of Non Wage Benefits in Pay Equity Comparisons.* Unpublished research paper commissioned by the Pay Equity Task Force, p. 28.

> In view of the gaps in benefits coverage by sex, it is vital to account for the full range of the forms or methods of compensation in order to determine a comprehensive measure of pay. In some cases, however, quantifying their value may be difficult.
>
> Richard P. Chaykowski. (2002). *Implementing Pay Equity in the Context of Emerging Workplaces and Employment Relationships.* Unpublished research paper commissioned by the Pay Equity Task force, p. 43.

Main monetary benefits should be specified.

Given the range of monetary benefits, the main types of monetary benefits (paid time off, group insurance, non-wage benefits) should be specified in the legislation, for the purpose of clarity, along with examples.

The issue is determining how to do this. The Canadian Bankers Association states that:

> Benefits should be included in the analysis of compensation differences only to the extent that they confer an advantage to one gender dominant employee group over another.
>
> Canadian Bankers Association (CBA). Submission to the Pay Equity Task Force, November 2002, p. 10.

In fact, as with flexible pay, we find that a sequential approach would be appropriate, and would consist of the following steps:

First, it must be determined whether the non-wage benefit is equally accessible to all job classes being compared.

- ➤ If it is, there is no need to include it in compensation for the purposes of estimating wage gaps.
- ➤ If not, there are two options:
    - the benefit can be granted to predominantly female job classes that currently do not enjoy that benefit; or
    - the value of the benefit can be estimated and included in compensation for the purpose of wage comparisons.

As Ontario's Pay Equity Hearings Tribunal asserted:

> Where the compensation paid to a female job class must be adjusted to achieve pay equity that adjustment may be made to wages or salaries, to benefits, or to a combination of the two.[21]

Benefits must be granted under similar conditions to women and men.

Equal access means the predominantly female job class must not only be granted the benefit, but it must also be granted the benefit under similar conditions. For example, suppose that, in a particular organization, unionized blue-collar workers are given three weeks of vacation after two years of employment. However, non-unionized clerical employees are only given three weeks of vacation after five years of employment. In this case, access cannot be considered equal.[22]

Where access is unequal, an employer may consider offering the benefit under the same conditions to those predominantly female job classes that currently do not have access to that benefit. This is a straightforward solution, and not necessarily as expensive as making wage adjustments to compensate for the missing benefits. As Ontario's Pay Equity Commission notes:

> Many employers in implementing pay equity have simply granted the additional benefit to the job class that does not have it. If so, there is no need to calculate the benefit's value to compare the two job classes.[23]

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[21] Ontario's Pay Equity Hearings Tribunal, *Lady Dunn General Hospital (1991)*, 2 P.E.R. 168.

[22] Ibid.

[23] Ontario's Pay Equity Commission. *Guideline No. 11. Determining Job Rate,* p. 4.

Value of benefits can be based on employer cost.

The allocation may be based on cost to the employer or benefits to the employee. Cost to the employer is easier to determine for many benefits involving an employer contribution. In the cafeteria plans mentioned earlier, the employer predetermines a total amount per employee and allows employees to choose the exact benefits they want. Furthermore, due to taxation or other requirements, a number of benefits provided by the employer must be accounted for using established methods. Thus, certain cost data are already available in the employers' own business records and do not require further calculations. All these data are part of the information employers must provide to the members of the pay equity committee so that they can fulfil their mandate.

With respect to pension plans, however, the cost method may conceal certain gender inequities, particularly with respect to pension plans. In fact, where accumulated value is comparable, women receive a smaller life annuity than men, owing to the difference in life expectancy. As G. Hallé writes:

> [TRANSLATION] Clearly an employer contribution of 3.5% of the salary to a fixed contribution pension plan may seem fair as long as it applies to all employees. In practice, however, a woman will receive a life annuity that is 15% lower for the same value accumulated in her account.[24]

An approach based on the value of the benefits themselves is harder to calculate and is less reliable. In a number of cases, the amount of the benefits and even the likelihood of receiving them are unpredictable and depend on unforeseeable factors such as sickness, accidents, and so forth.

The proposed Canadian Pay Equity Commission will need to develop guidelines for assigning a monetary value to benefits. Below we provide an overview of options for estimating benefits:[25]

- **Time-related benefits**: Vacation leave, statutory holidays, floating holidays, leave without pay for various reasons, and parental and family leave. For this type of benefit, the determining criterion should be equal access for the job classes compared. However, where applicable, cost would be calculated on the basis of salary (or on employer contributions to the various group plans for a leave without pay). Maternity leave is not included in benefits for pay equity purposes since it is addressed to a different issue of discrimination concerning women, and it is a statutory requirement.

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[24] G. Hallé, Confédération des syndicats nationaux (CSN). (1999). *Définition de la rémunération*. Note de recherche, p. 4.

[25] These options are partly based on Monica Townson's 2002 study, *The Treatment of Non-Wage Benefits in Pay Equity Comparisons*, an unpublished research paper commissioned by the Pay Equity Task Force. See the Appendix of this paper, Options for Valuing Non-Wage Benefits, pp. 40-44.

- **Group coverage benefits**: Pension plans, life insurance, disability insurance, drug insurance, health insurance. Cost should be based on employer contributions. For flexible plans, the estimation will be based on the total amount the employer allocates for each job class compared.
- **Non-wage benefits**: Tools, uniforms and clothing must be included based on cost to the employer, unless required by occupational health and safety legislation. Other expenses such as parking, payment of professional dues, paid educational leave and reduced-rate loans should be included, based on the cost to the employer.

Need for flexibility in benefit calculations.

The proposed Canadian Pay Equity Commission should also indicate the need for certain adjustments to take certain temporary situations into account. For example, in recent years, pension surpluses have meant that a number of employers have been granted a pension contribution holiday.

11.4 The Task Force recommends that the new federal pay equity legislation include a provision that indicates that benefits without monetary value include:

- **paid time off, such as sick leave, personal and parental leave, holidays and statutory holidays, break and meal times, or any similar element;**
- **group retirement and contingency plans, such as pension funds, health or disability insurance plans, or any other group plan; and**
- **non-wage benefits, such as supply and maintenance of tools, uniforms or other clothing (except where such an item is required under occupational health and safety legislation or is necessary for the job), parking, meal allowances, supply of vehicles, payment of professional dues, paid educational leave, refund of tuition, reduced rate loans, or any other form of benefit.**

Where a benefit with monetary value is accessible equally and without discrimination to predominantly female and predominantly male job classes, it is not necessary to include it when estimating wage gaps.

Wage Comparisons

Approaches in Canadian Jurisdictions

At the federal level, the *Equal Wages Guidelines, 1986,*[26] provide for two types of comparisons—direct and indirect ones. A "direct comparison" means comparing a predominantly female job with an equivalent predominantly male job, while an "indirect comparison" is a term used when directly equivalent male comparator jobs are not available.

***Equal Wages Guidelines, 1986:* direct and indirect wage comparisons.**

The Guidelines stipulate that, for complaints by groups:

> 15.(1) Where a complaint alleging a difference in wages between an occupational group and any other occupational group is filed and a direct comparison of the value of the work performed and the wages received by employees of the occupational groups cannot be made, for the purposes of section 11 of the Act, the work performed and the wages received by the employees of each occupational group may be compared indirectly.
>
> (2) For the purposes of comparing wages received by employees of the occupational groups referred to in subsection (1), the wage curve of the other occupational group referred to in that subsection shall be used to establish the difference in wages, if any, between the employees of the occupational group on behalf of which the complaint is made and the other occupational group.[27]

Manitoba's legislation[28] does not specify a particular method, but allows those in charge of pay equity to choose. Wages can thus be compared using various methods, including:

Manitoba: no wage comparison method specified.

- job-to-job comparisons, in which a predominantly female job class is compared to a predominantly male job class of the same value;
- comparisons of predominantly female job classes to a regression line for predominantly male job classes; and
- comparisons of a regression line for predominantly female job classes to a regression line for predominantly male job classes.[29]

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[26] Canada. *Equal Wages Guidelines, 1986* SOR/86-1082.

[27] Ibid.

[28] Manitoba, *supra,* note 2.

[29] Pay Equity Bureau. (Undated). *Interpretation and Wage Adjustments.* Manitoba Labour. Winnipeg.

Ontario: several comparison methods allowed.

At first, Ontario's legislation provided only for individual comparison methods. This approach quickly turned out to be too restrictive where predominantly female job classes had no male comparator of the same value. Thus, the law was amended in 1993 to provide for two new comparison methods.

> The first method involves using proportional value, which looks at the relationship between the value or points assigned to male job classes through a job evaluation process and the pay they receive. The method requires that the same relationship be applied to female job classes.[30]
>
> The second method is the proxy comparison method, which in Ontario can be used only by organizations in the broader public sector. An employer cannot use this method unless the other two methods are unsuitable. In that case, the organization must apply to Ontario's Pay Equity Commission for authorization to compare its job classes to those of an outside organization, based on a well-structured procedure.[31]
>
> The proxy method was abrogated in January 1997 and re-established in September 1997 after a court ruled that its abrogation breached the *Canadian Charter of Rights and Freedoms.*[32]

The Ontario legislation thus makes it clear that a method which involves comparisons within an organization is to be preferred, and that the proportional value or proxy methods are only to be used if this is not possible.

Wage comparison methods in Nova Scotia, Prince Edward Island and New Brunswick give precedence to the individual comparison method and restrict comparisons to those made within an organization.

Quebec: overall or individual methods.

In Quebec, the legislation allows two possible choices: using an overall method or an individual one. Section 61 stipulates that:

> 61. Differences in compensation between a predominantly female job class and a predominantly male job class may be valuated on an overall or individual basis or according to any other method prescribed by regulation of the Commission for valuating differences in compensation.[33]

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[30] Ontario's Pay Equity Commission. *Pay Equity: The Proxy Comparison Method,* p. 1.

[31] Ibid.

[32] *SEIU, Local 201* v. *Ontario (Attorney-General)* (1997), 35 O.R. (3d) 508.

[33] Quebec, *supra,* note 7.

Under this provision, the Commission de l'équité salariale (Quebec pay equity commission) may allow recourse to other comparison methods, but to date this has not been necessary. Two sections define the comparison methods:

> 62. Valuation on an overall basis shall be effected by comparing each predominantly female job class with the earning curve of all predominantly male job classes.[34]

This is the comparison of each predominantly female job class with the regression line for predominantly male job classes, the method referred to as "job-to-line."

> 63. Valuation on an individual basis shall be effected according to the job-to-job method of comparison, that is, by comparing a predominantly female job class with a predominantly male job class of equal value.
>
> In applying the job-to-job method of comparison, where there are two or more predominantly male job classes of equal value but with different remuneration, comparisons are made on the basis of the average remuneration for those job classes.
>
> Where the job-to-job method of comparison cannot be applied to a predominantly female job class, its remuneration shall be valuated proportionately to the remuneration of the predominantly male job class the value of which is closest to its value.[35]

The second paragraph refers to cases where a predominantly female job class has several male comparators of the same value and stipulates that, in such a case, the average wage is used for comparison.

The third paragraph also provides for the proportional comparison method when job-to-job comparisons cannot be used for certain predominantly female job classes in the plan. In this case, the male comparator with the closest value is used (it may be lower or higher).

Proxy comparisons allowed in Quebec.

One important innovation in Quebec's *Pay Equity Act* is that it provides, in the case of both public and private employers, for the possibility of proxy comparisons (comparisons outside the organization) where no male comparator exists within the organization. In fact, the second paragraph of section 1 stipulates the following:

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[34] Quebec, *supra*, note 7.

[35] Quebec, *supra*, note 7.

> 1. [...] Differences in compensation are assessed within the enterprise, except if there are no predominantly male job classes in the enterprise.[36]

We will address this important aspect further on.

An overview of Canadian pay equity legislation indicates that all the statutes provide for the use of different wage comparison methods. Some statutes indicate a specific order to follow while others, like Quebec's legislation, allow those in charge of pay equity to choose one of two specific methods.

Specific non-discrimination criteria are included:

- Overall comparisons are made using a line for only predominantly male job classes.
- A method cannot be used if it excludes a predominantly female job class from comparison.
- Wages cannot be reduced in order to achieve pay equity.

The two laws with the broadest scope are those of Ontario and Quebec. The Ontario law provides for proxy comparisons in the broader public sector, while the Quebec law extends this to all sectors in the province. However, proxy comparisons are permitted only if no internal comparator exists and such comparisons are closely overseen by the pay equity commissions.[37]

Choosing a Wage Comparison Method

Criteria for selecting comparison methods.

Based on the preceding review of pay equity laws, several questions appear relevant with respect to wage comparison methods:

- Should there be a choice of several methods? If so, should they be listed?
- If a choice is given, should an order be specified? Should criteria be set out to guide the choice? If so, which criteria?
- If only one criterion is imposed, which will it be?

We have seen that the current legislation refers primarily to two methods: the job-to-job method and the job-to-line method. However, other methods do exist, as John Kervin[38] explains, depending on how predominantly female and predominantly male jobs are treated. The table below shows the potential combinations.

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[36] Quebec, *supra*, note 7.

[37] In Ontario, the wage calculation methods are set out in various Pay Equity Commission documents. The Quebec pay equity commission, however, is presently developing guidelines concerning the use of proxy comparisons.

[38] John Kervin. (2002). *Wage Adjustment Methodologies*. Unpublished research paper commissioned by the Pay Equity Task Force.

The Six Basic Adjustment Methodologies, in Terms of Choice of Male Comparator Jobs and Number of Adjustment Calculations

	Adjustment for Each Female Job	Adjustment for Each Group of Female Jobs	Adjustment Formula for All Female Jobs
Individual male job	Job-to-job	NOT USED	NOT USED
Group of male jobs	Job-to-segment	Level-to-segment	NOT USED
All male jobs	Job-to-line	Level-to-line	Line-to-line

Source: John Kervin. (2002). *Wage Adjustment Methodologies*. Unpublished research paper commissioned by the Pay Equity Task Force, Table 1, p. 4.

Each of these methods may involve various methods of application, which must be non-discriminatory in nature. This chapter will examine the principal methods used in pay equity; we refer interested readers to the John Kervin's research paper for information on other methods. We restricted our analysis to the methods used most often in pay equity legislation, as those methods allow for dealing with most of the situations found in workplaces and are also those which have been adapted to pay equity. Moreover, we do not think the necessary flexibility of the pay equity process means we must give those in charge of pay equity a choice of five or six wage comparison methods. This may create endless debate within the committees debates understood mainly by experts. That is far from a desirable outcome.

The Job-to-Job Methodology

The job-to-job methodology is the simplest of all wage adjustment methodologies and could be an appropriate methodology for organizations with few job classes. It consists of comparing a female predominant job class with a male predominant job class of equal value. All female predominant job classes that have a male comparator of equal value will be paid exactly the same as the male comparator after the pay equity wage adjustment.

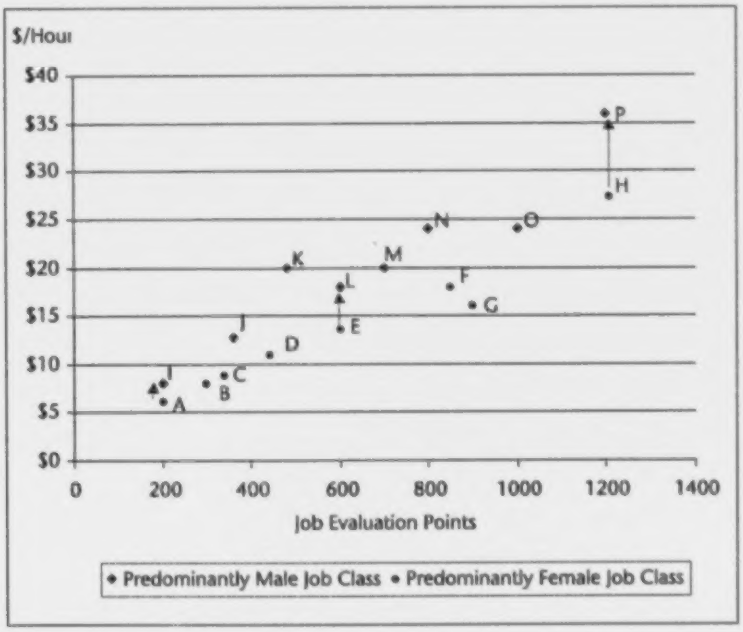
Limitations of job-to-job methodology.

The main limitation of the job-to-job methodology is that it excludes all predominantly female job classes without a male comparator of equal value. Thus, in many cases, it will eliminate wage discrimination for some predominantly female job classes, but not for others. As shown in Figure 6, only three predominantly female job classes (points A, E and H) have a male comparator of the same value. Therefore, job class A evaluated at 200 points would received a wage adjustment of $2 ($6 to $8); E evaluated at 600 points would receive a wage adjustment of $4.50 ($13.50 to $18) and job class H evaluated at 1,200 points would receive a $9 adjustment ($27 to $36). However, inequities may also be introduced. For example, after the adjustment, the salary for job class G valued at 900 points would be less than job class E at 600 points—$16 versus $18—simply because the male comparator associated with the first job happens to receive a relatively higher salary.

This outcome was noted in a number of submissions and some stakeholders strongly suggested that this methodology not be used.

> The PSAC strongly urges the Task Force to reject the 'job-to-job methodology' on the basis that it can result in some female jobs of high value receiving no wage adjustment at all, because there is no male job at exactly the same value. In contrast, lower valued female jobs could receive very high adjustments if there happens to be a highly paid male job at their particular value.
>
> Public Service Alliance of Canada (PSAC). Final submission to the Pay Equity Task Force, November 2002, pp. 17-18.

Figure 6: Job-to-Job Methodology



To avoid such unequal results, the process must be completed with another comparison method, that of proportional value, which, in the case of individual comparisons, amounts to applying a simple rule of three. In the long run, this type of approach makes it difficult and complicated to maintain pay equity. For example, in Figure 6, the closest male comparator to the predominantly female job class at point F (850 points at $18) is point N (800 points at $24). Comparing the proportional value of those two job classes requires applying the following rule of three to determine $x as the new pay equity wage of the predominantly female job class:

$850/800 = x/ \$24;\ 1.06 = x/\$24;\ x= \$24 \times 1.06 = \$25.50$

Thus, the new pay equity wage for the predominantly female job class is $25.50, representing an adjustment of $7.50.

The Job-to-Line Methodology

Job-to-line method: most common.

The job-to-line methodology[39] appears to be the most widely used methodology and is based on the recognition of the systemic nature of discrimination against predominantly female jobs.

This methodology consists of comparing the wages of predominantly female job classes to the regression wage line[40] for predominantly male job classes. The male wage line reflects the relationship between wages and job evaluation points. It is crucial that the reference wage line is only fitted to male job classes. In fact, including predominantly female job classes in the reference line would build discrimination into the line itself as noted by Nan Weiner and Morley Gunderson:

> The all-job wage line combines the undervalued female jobs with the correctly valued male jobs. Thus, the all-job wage line will always be lower than the male wage line *because of gender bias.*[41]

As shown in Figure 7, all predominantly female job classes can be compared to the male reference line. The wage adjustment for female job classes is equal to the vertical distance between the male wage line and each observation for the female job class—observations A to H. Thus, unlike the job-to-job methodology, all the female jobs are brought up to the male wage line even if there is no predominantly male job class comparator of equal value. This results in a consistent pay structure for all predominantly female job classes and easier maintenance of pay equity in the long term.

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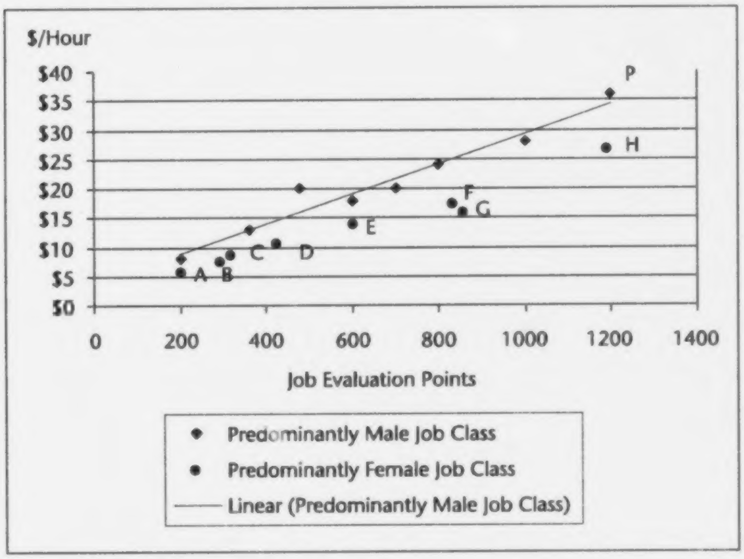
[39] A terminology note is required here to avoid confusion. Certain stakeholders in Ontario also use the term *proportional value comparison* to refer both to the *rule of three* presented in the case of job-to-job comparison and to the overall method of job-to-line comparison. In this text we specify the meaning of this expression where necessary to avoid confusion.

[40] The wage regression line is based on all predominantly male job classes, not just a sample of them. Consequently, even if very few job classes are used, for example eight or 10, it reflects the entire population and may be considered representative.

[41] Nan Weiner and Morley Gunderson. (1990). *Pay Equity. Issues: Options and Experiences.* Butterworths, p. 81.

Figure 7: Job-to-Line Methodology



Wage adjustments should be determined on a proportional value basis, and not on job-to-job comparison. Wage line adjustments provide a more accurate estimation of the male wage pay policy and should be mandated as the method required to determine adjustments. It is possible to use proportional value methodologies even in smaller workplaces. It does not necessarily require complex systems.

Canadian Labour Congress (CLC). Final submission to the Pay Equity Task Force, November 2002, p. 9.

The Job-to-Segment Methodology

Job-to-segment method: may limit comparisons and minimize the wage gaps.

The job-to-segment methodology is similar to the job-to-line methodology. In essence, the all-male reference wage line is divided into a number of segments based on the value of male job classes within a certain range of female job classes. This methodology is useful if the relationship between wages and job value is curvilinear. If a linear wage line is used in this case, the pay equity adjustments could be distorted, as the slope of the linear line is constant. As illustrated in Figure 8, each segment of a curvilinear line has a different slope.

> The advantage of the job-to-segment approach is that the segments can each have different slopes. This allows the segments to capture curvilinearity in the *overall male wage line* without the use of a curvilinear line. In effect, the idea is to break a potentially *curvilinear* male wage line into a number of separate and *overlapping linear* male wage lines, each capturing the slope of the male wage line in a smaller *segment* of male jobs.
>
> John Kervin. (2002). *Wage Adjustment Methodologies*. Unpublished research paper commissioned by the Pay Equity Task Force, p. 9.

One of the shortcomings of this methodology is that a segment is based on a subset of job classes within a certain job value range. According to John Kervin, if the range is very narrow, it may limit wage comparisons by introducing potential arbitrariness into the calculation of pay equity adjustments.[42] Thus, there is room with this methodology to choose certain ranges with the objective of either minimizing or maximizing a potential pay equity adjustment.

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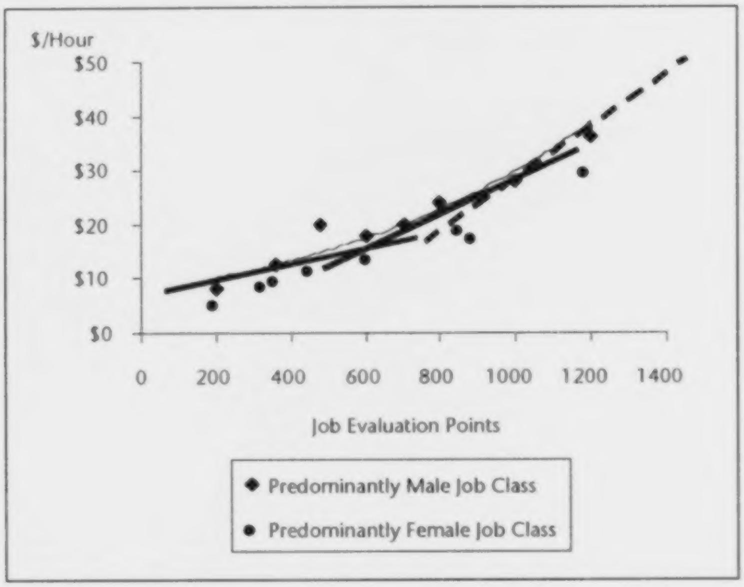
[42] John Kervin. (2002). *Wage Adjustment Methodologies*. Unpublished research paper commissioned by the Pay Equity Task Force, p. 10.

Figure 8: Job-to-Segment Methodology

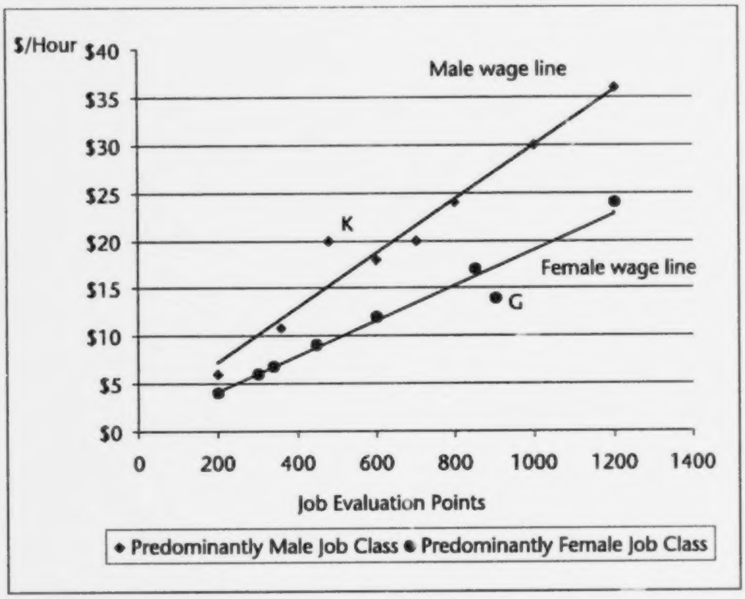


The Line-to-Line Methodology

Line-to-line method: does not exclude any female job classes.

The line-to-line methodology consists of drawing a wage line for predominantly female job classes and predominantly male job classes. This is usually done using regression analysis. Using this approach, the female wage line is brought up to the male wage line, resulting in one wage line which reflects a common pay policy for men and women. However, since the regression line is drawn to represent the average of all the observations, there will still be observations above and below both the male and female wage lines. When the female wage line is moved up to the male wage line, these observations will maintain their relative positions above and below the equalized wage line. Thus, although all women can receive a pay equity adjustment, even if there is no male comparator, a female job class could still be paid less than a male job class of equal value if the observation point for that job class is below the female wage line. For example, the female job class represented by observation point G in Figure 9 would not receive the same pay equity adjustment as it would in Figure 7, which demonstrated the job-to-line methodology of determining wage adjustments. In addition, the final structure of the predominantly female job classes is not consistent and the outcome is more difficult to maintain.

Figure 9: Line-to-Line Methodology



Can we say ahead of time that in general, one method will result in higher pay equity adjustments than another? No. The answer varies from case to case. In some organizations, the job-to-job comparison method will result in higher adjustments than the job-to-line method, and at another organization, it will be the reverse. It all depends on the configuration of wages for the organization's female and male jobs and their value. No particular method results in higher adjustments—everything hinges on the initial wages and the content of the occupations at each organization. Several stakeholders came out in favour of the job-to-line comparison method.

Job-to-line method generally preferable.

The job-to-line method best meets the objective of pay equity because it is inclusive and the consistency it brings to the pay structure of predominantly female job classes makes it more adaptable to changing conditions. However, in some very small organizations, statistical regression is not necessary to calculate adjustments and individual comparisons suffice.

> Any methodology chosen must be consistent with a broad and liberal interpretation of the legislation and attaining the goal of pay equity. For the reasons outlined above, we believe that proportional value where there are male comparators and the use of a proxy approach where there are not is most consistent with achieving this objective.
>
> Public Service Alliance of Canada (PSAC). Final submission to the Pay Equity Task Force, November 2002, p. 18.

Although we believe the job-to-line method is the best option in most circumstances, we also think pay equity committees should be given some choice based on the organization. We therefore also support the job-to-job method and the proportional value method as potential options for small businesses with very few job classes. Moreover, we also recommend allowing pay equity committees to request authorization to use the job-to-segment method, which may be the only practicable solution for very large organizations. The committee will, however, be required to explain the grounds for that request.

11.5 The Task Force recommends that the new federal pay equity legislation provide that:

- **in organizations of 100 or more employees, wage gaps must be estimated on an overall basis by comparing predominantly female job classes to the wage line for solely predominantly male job classes; and**
- **in organizations with fewer than 100 employees, wage gaps may be estimated:**
  - **on an overall basis, as indicated above; or**
  - **on an individual basis using job-to-job comparison or proportional value comparison.**

11.6 The Task Force recommends that the new federal pay equity legislation provide that where a pay equity committee shows there are serious reasons why none of the methods recommended above is practicable in that organization, it may use the job-to-segment method subject to authorization by the proposed Canadian Pay Equity Commission, described in Chapter 17.

11.7 The Task Force recommends that the new federal pay equity legislation provide that a comparison method cannot be used if it excludes a predominantly female job class.

Wage Adjustments

Wage adjustments are the amounts that employees in a predominantly female job class receive when their wage is adjusted. These are the individual amounts each person receives.

Preventing Wage Reduction

Wages cannot be reduced to eliminate gap.

Once wage gaps have been measured, achieving pay equity means that equality is reached by raising the wages of predominantly female job classes. In other words, as indicated in all existing pay equity legislation, the wage of the male comparator cannot be reduced in order to eliminate the discriminatory gap with a predominantly female job class. Furthermore, where a predominantly female job class is higher in level than its male comparator—a situation that is unusual, but nonetheless possible—the wage for that job class cannot be reduced, but must remain the same.

A number of stakeholders stressed the importance of this prohibition. The Canadian Labour Congress writes that:

> Employers should be prohibited from reducing the pay of any group to pay for any wage adjustments determined as a result of the plan.
>
> Canadian Labour Congress (CLC). Final Submission to the Pay Equity Task Force, November 2002, p. 9.

11.8 The Task Force recommends that the new federal pay equity legislation provide that wages cannot be reduced in order to achieve pay equity.

Harmonizing Differentiated Pay Structures

Many organizations have different pay structures for women's jobs and men's jobs. Can pay equity be achieved without changing those structures? Often, predominantly female job classes that are clerical in nature have relatively broad salary ranges, which means it takes much longer to reach the maximum pay level, whereas the predominantly male trades have a flat wage rate. In other cases, predominantly male jobs also have salary ranges, but with fewer levels; again, the maximum pay level is reached more quickly.

As experts in evaluation and compensation assert:

> [TRANSLATION] Pay inequity in male and female job classes can be expressed in many ways, particularly by the number of levels in their respective salary range, the minimum and maximum rates in their salary range, the rate of progression in their salary range, etc.[43]

> Without entering into the debate over the best approach (salary ranges or flat rates), we favour harmonizing the wage structures within an enterprise, since different compensation practices are the hallmark of gender-based work organization.
>
> Louise Boivin. (2002) *Implementing Pay Equity in Small-to-Medium Enterprises.* Unpublished research paper commissioned by the Pay Equity Task Force, p. 49.

With differentiated pay structures, pay equity involves comparing the maximum rate of pay scales and single wage rates. Once the wage gap is estimated using one of the methods selected, what happens to the wages of employees in predominantly female job classes at lower levels? Although the wage for each level will increase by a specified amount, it will still be lower than the scale maximum, or pay equity wage. To create pay equity between a predominantly female job class paid on a scale and a predominantly male job class paid a single rate, shouldn't pay structures instead be harmonized?

Differentiated pay structures may be considered discriminatory.

Maintaining pay structures differentiated by gender violates the principle of inclusiveness and may be considered discriminatory. Because the pay structures are based on principles that are partially different, the incumbents of predominantly female jobs at lower levels of the scale receive, for a number of years, a lower wage than do incumbents of equivalent predominantly male jobs.

Note that this inequitable result will be perpetuated—that is, it will recur as new women workers are hired in predominantly female job classes and have to work their way up through each level before reaching the pay equity wage. At the same time, men who are newly hired in predominantly male job classes will obtain that wage in their very first year of work.

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[43] Thériault and St-Onge, *supra*, note 8, p. 400.

Quebec: differentiated pay structures are discriminatory.

Quebec's Tribunal des droits de la personne (human rights tribunal) ruled that maintaining such differentiation is discriminatory under section 19 of Quebec's *Charter of Human Rights and Freedoms*:

> 286. [...] Once it has been recognized that existing pay differences between equivalent jobs are due to systemic discrimination, the right to equal remuneration requires that salaries be adjusted.[44]

The type of harmonization selected will depend on the situation in question. In some cases, it will be a matter of creating an equal number of levels. In others, it will mean balancing the rate of progression in the salary range. Where a salary range applies to women's jobs and a flat rate applies to male comparators, the Fédération des travailleurs et travailleuses du Québec (FTQ) favours applying the flat wage rate to the women's jobs as well.

> [TRANSLATION] A certain reality—that of multiple pay levels—is also found in pay equity. This reality is often hidden but contributes to wage discrimination, and is a very common characteristic of "women's" jobs. It is especially important that the number of levels for "men's" jobs not be increased under the pretext of equity: we should remember that the premise of pay equity is that "women's" jobs are undervalued, not the other way around.
>
> Fédération des travailleurs et travailleuses du Québec (FTQ). Submission to the Pay Equity Task Force, April 2002, p. 12.

It will be up to the proposed Canadian Pay Equity Commission to provide guidelines on how to harmonize pay structures.

11.9 The Task Force recommends that the new federal pay equity legislation provide that where the pay structures of predominantly female job classes differ from those of equivalent predominantly male job classes, those structures must be harmonized in order to implement pay equity.

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[44] C.D.P.D.J. *Rhéaume* c. *Université Laval*, (2002-08-02), QCTDP 200-53-000013-982.

Terms of Payment for Wage Adjustments

Under Quebec's *Pay Equity Act,* the pay equity committee has no decision-making authority regarding the terms of payment for wage adjustments. The committee has advisory power only; it is the employer that decides the terms of payment, in accordance with the very specific provisions in the legislation regarding the time frame and the instalments. We find this approach reasonable, as long as the legislation is clear in this regard.

Determining the terms of payment for wage adjustments is the last stage of implementing a pay equity plan. It basically consists of spreading the payments out over time. The purpose of the instalments is to ensure the employer does not have to pay out the total adjustment in one lump sum. In some cases that may be too heavy a burden, as adjustments generally range from about 2 to 4 percent of payroll. However, if the amount is not large, the employer can pay it quickly. That is why we recommend one aspect of Ontario's approach, which is to impose a minimum of 1 percent of the annual payroll. We further recommend a maximum period of three years (for a total of four payments) be set for full payment.

For example, suppose an organization is obliged to pay a total amount equal to 4.5 percent of its payroll. The payment can be broken down as follows:

- Year 0 (upon implementation of the plan): 1 percent
- Year 1 (following year): 1 percent
- Year 2 (following year): 1 percent
- Year 3 (following year): 1.5 percent

Thus, in this example, the entire balance must be paid in Year 3.

Payments calculated based on date plan completed.

Payments are not retroactive, but begin to be calculated on the date the plan is completed. However, we are recommending that an employer who is late in making wage adjustments be penalized, and that the late payments bear interest from the date they were due.

If an organization is temporarily in financial difficulty and cannot meet its obligations, it may ask the proposed Canadian Pay Equity Commission for an additional period of one year. To be approved by the Commission, such a request must be clearly justified and properly documented and may be renewed once. Spreading out payments and obtaining permission to delay making them must not be used as excuses to delay granting the basic right that is pay equity.

Once the terms of payment have been established, the new pay structures and pay equity adjustments must be integrated into the organization's system and into the collective agreement for unionized employees.

> Pay equity wage adjustments must be folded into wages and not left as separate payments.
>
> Canadian Labour Congress (CLC). Final submission to the Pay Equity Task Force, November 2002, p. 9.

11.10 The Task Force recommends that the new federal pay equity legislation provide that:

- **payment of wage adjustments shall be equal to at least 1 percent of the organization's payroll per year; and**
- **payment must begin as soon as the pay equity plan is completed and end at the latest three years after that date. At that time all wage adjustments must be paid in full.**

11.11 The Task Force recommends that the new federal pay equity legislation provide that pay equity adjustments are considered to be part of the collective agreement.

Wage Comparisons Where No Male Comparator Exists Within the Plan

One plan only for each organization.

We have already recommended that a single pay equity plan be implemented for each employer. We have also indicated that the proposed Canadian Pay Equity Commission may modify the pay equity unit for specific reasons. There may be circumstances where an organization has more than one pay equity plan, and one of the plans includes only predominantly female job classes.

This raises the question of whether, in this situation, the pay equity committee should be completely free to choose comparators, or whether the choice should be governed by the legislation. We have shown on several occasions how various stakeholders have expressed a need for guidance and details in terms of methodology. It would certainly be preferable for pay equity committees to avoid lengthy discussions and potential disagreements over every aspect of the plan. We recommend the solution put forward in particular, in Quebec's legislation, under which the committee is obliged to compare predominantly female job classes with all male comparators in the organization, regardless of which plan they fall under.

If the predominantly male job classes belong to two or more pay equity plans, points of interconnection must be established (for example, using benchmark jobs) to allow for cross-plan comparisons.

Before concluding that there are no predominantly male job classes in a plan or in an organization, the pay equity committee must ensure that all gender predominance indicators have been considered properly. The disproportion indicator as discussed in Chapter 9 may be useful if it allows a job class to be considered predominantly male when 40 percent of its incumbents are men and this proportion is significantly higher than the proportion—say 9 percent—of the male workers working for that employer. The composite indicator discussed in Chapter 9 may also be considered.

11.12 The Task Force recommends that the new federal pay equity legislation provide that where there is no male comparator within a given pay equity plan, the comparison must be made using all the predominantly male job classes in the organization.

Wage Comparisons Where No Male Comparator Exists Within the Organization

Proxy comparisons can be used in both the private and public sectors. The proposed Canadian Pay Equity Commission would be responsible for developing a proxy methodology based on typical job classes selected in organizations that have completed their pay equity plans.

Several submissions clearly indicated the need to develop methods that allow for the use of proxy comparisons where there is no male comparator within an organization. Ontario's legislation in this area was innovative in allowing proxy comparisons for organizations in the broader public sector. This was especially useful in highly feminized sectors such as social services. However, these provisions did not solve the problems of a number of feminized sectors in the private sector, such as the needle trade, retail sales, tourism and day care. Many such sectors have few unions, unfavourable working conditions and low wages. They also employ a high proportion of immigrant women. Thus, a significant percentage of women with difficult working conditions have been unable to benefit from the legislation.

Quebec's *Pay Equity Act*.

Given this finding, as mentioned earlier, Quebec's *Pay Equity Act* (section 1, paragraph 2)[45] allows for proxy comparisons without any restriction in terms of sector:

> 1. [...] Differences in compensation are assessed within the enterprise, except if there are no predominantly male job classes in the enterprise.

Section 13 of Quebec's *Pay Equity Act* stipulates that:

> 13. In an enterprise where there are no predominantly male job classes, the pay equity plan shall be established in accordance with the regulations of the Commission.[46]

Paragraph 2 of section 114 of the *Pay Equity Act*[47] specifies that the Quebec pay equity commission must to that end:

- identify typical job classes identified in organizations where a pay equity plan has already been completed;
- determine evaluation methods for those job classes; and
- determine methods for estimating wage gaps between the typical classes and predominantly female job classes in the organization without comparators.

Because of the delay in implementing the Quebec law, a sufficient number of typical job classes have become available only quite recently and, as a result, the Quebec pay equity commission is still in the process of drafting guidelines in this regard.

Use of gender predominance indicators to identify male comparators.

Another solution for a lack of comparators would be to ask the sectoral committees of the type we described in Chapter 6 to determine the male comparators for organizations in that sector with only predominantly female job classes. Two series of factors must be considered: first, the requirements of the job classes and second, indicators such as the size of the organization, its type of product and market (high-end or mass consumption), the labour intensiveness of production techniques, and whether the organization is for-profit or not-for-profit, as the case may be. In our view, such a choice is more appropriate because employer and employee representatives participate in sectoral committees. We also believe the proposed Canadian Pay Equity Commission should approve the male comparators thus identified.

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[45] Quebec, *supra*, note 7.

[46] Quebec, *supra*, note 7.

[47] Quebec, *supra*, note 7.

Where there is no comparator, the employer must inform the proposed Canadian Pay Equity Commission of that fact and follow its guidelines respecting the choice of procedure.

11.13 The Task Force recommends that the new federal pay equity legislation provide that where no male comparator exists within an organization, comparisons can be made using the proxy method.

As the provisions of the Quebec legislation concerning proxy methodologies indicate, the choice of jobs from a different organizational environment which will provide a suitable basis for comparison requires careful examination of a number of features of the jobs which are to be compared. Though the features of all of the jobs which are to be involved in the comparisons are an essential part of this inquiry, other factors—such as the size of the external organization, the market it serves, the nature of its products and production techniques and whether it is a profit or non-profit organization—are important as well.

Where there is a sectoral committee in place of the kind we have described in Chapter 6, that committee may be well placed to identify suitable male comparators for organizations in the sector which have only female predominant job classes. In this context, the representatives of employees and employers on the sectoral committee will be able to choose comparators from organizations which can be expected to have many similar features.

In any case, we are recommending that the proposed Canadian Pay Equity Commission be expected to approve, not only the methodologies for any proxy comparisons which are to be made, but the choice of particular comparators.

Where it proves genuinely impossible to identify a male comparator from an organization with common features, we suggest that an employer should be required to seek the assistance of the proposed Canadian Pay Equity Commission. It may be possible for the proposed Canadian Pay Equity Commission to develop guidelines outlining criteria for "shadow" or "prototype" comparators which could be used as a last resort.

11.14 The Task Force recommends that the new federal pay equity legislation provide that the mandate of the proposed Canadian Pay Equity Commission, described in Chapter 17, will include the authority to make regulations stipulating the methodology and steps that organizations without male comparators must follow and to provide special support to organizations that use the proxy comparison method.

Conclusion

In this chapter, we presented the final stage of the pay equity plan, that in which pay equity adjustments are calculated. We saw that it is a relatively complex stage that must be adapted to the reality of the workplace while strictly observing non-discrimination requirements. The numerous technical aspects of compensation and wage comparison mean that choices must always be made using a liberal interpretation that allows pay equity to be achieved fully.

Chapter 12 – Allowable Exemptions

Nearly all pay equity legislation provides that certain kinds of wage differentials are exempt from consideration in making comparisons and are not considered discriminatory.

Needless to say, the nature and extent of these exemptions has been controversial. Framed too broadly, they can undermine the capacity of the legislation to support the goal of achieving equity, and can reinforce the discriminatory patterns which prompted the passage of the legislation in the first place. As Michael Baker and Morley Gunderson remarked:

> Exemptions can effectively emaciate legislation, creating inequities between those who are exempt and those who are not exempt. The exemptions can also represent concessions to powerful interest groups, with the concessions granted to some groups simply whetting the appetite for more concessions for others. Exemptions can also complicate the application and enforcement of the laws, encouraging parties to alter their behaviour towards being exempt and raising the spectre of costly litigation and disputes if exemptions are contested.
>
> Michael Baker and Morley Gunderson. (2002). *Allowable Exemptions and Pay Equity.* Unpublished research paper commissioned by the Pay Equity Task Force, p. 1.

On the other hand, the provision of exemptions prevents the statutory framework from being too rigid and failing to reflect legitimate differences in pay:

Exemptions can provide flexibility.

> In contrast, exemptions can provide necessary flexibility in the application of legislation and get away from the notion that "one size fits all." Laws that are inflexibly applied and do not accommodate different situations run the risk of imposing excessive costs and perhaps of being ignored or evaded because they are regarded as inappropriate to certain situations. This can lead to disrespect for the law that ultimately can undermine its support. Inflexible application can also engender resistance to the adoption of progressive legislation and lead to support for its repeal.
>
> Michael Baker and Morley Gunderson. (2002). *Allowable Exemptions and Pay Equity.* Unpublished research paper commissioned by the Pay Equity Task Force, p. 1.

> Overall, the allowable exemptions appear to be a compromise between reducing the most negative effects pay equity could have on the market-based principles of allocative efficiency, and reducing the strongest areas of resistance from some stakeholders, at the expense of forgoing some of the basic principles of pay equity in the sense of achieving redress for persons in female-dominated jobs.
>
> Michael Baker and Morley Gunderson. (2002). *Allowable Exemptions and Pay Equity.* Unpublished research paper commissioned by the Pay Equity Task Force, p. iv.

Common exemptions.

The most common exemptions which are found in pay equity legislation are for payments related to seniority systems, changes in pay resulting from a temporary assignment, payments for meritorious performance, pay levels which are the result of "red-circling," and wage variations resulting from skills shortages.[1]

Ontario's *Pay Equity Act*[2] further provides, once pay equity is achieved, that the Act does not apply to prevent differences in compensation attributable to "bargaining strength." Regulations under the statute also provide that differences in compensation arising from the award of an arbitrator are not to be included in pay equity comparisons.

Under Quebec's *Pay Equity Act,*[3] exemptions are also provided for regional variations in wages and for the "non-enjoyment of benefits having pecuniary value" by temporary, casual and seasonal workers.

Equal Wages Guidelines, 1986 **currently provide for exemptions.**

The *Equal Wages Guidelines, 1986*[4] which were passed to assist with the interpretation of section 11 of the *Canadian Human Rights Act* are reproduced in Appendix D of this report. Section 16 of the Guidelines provides exemptions in the following circumstances: different performance ratings; seniority; re-evaluation and downgrading of a position; a rehabilitation assignment; non-disciplinary demotion; temporary training positions; internal labour shortages; reclassification; and regional variation in wages.

The Guidelines also provide the following assistance in interpreting these provisions:

> 17. For the purpose of justifying a difference in wages on the basis of a factor set out in section 16, an employer is required to establish

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[1] For example, see Nova Scotia's *Pay Equity Act*, R.S.N.S. 1989, c. 337, s. 13(4).

[2] Ontario. *Pay Equity Act.* R.S.O. 1990, c. P.7, s. 8.

[3] Quebec. *Pay Equity Act.* R.S.Q., c. E-12.001, s. 67.

[4] Canada. *Equal Wages Guidelines*, 1986, SOR/86-1082.

> that the factor is applied consistently and equitably in calculating and paying the wages of all male and female employees employed in an establishment who are performing work of equal value.
>
> 18. In addition to the requirement of section 17, for the purpose of justifying a difference in wages on the basis of paragraph 16 (h), an employer is required to establish that similar differences exist between the group of employees in the job classification affected by the shortage and another group of employees predominantly of the same sex as the group affected by the shortage, who are performing work of equal value.
>
> 19. In addition to the requirement of section 17, for the purpose of justifying a difference in wages on the basis of paragraph 16(i), an employer is required to establish that
>
> (a) since the reclassification, no new employee has received wages on the scale established for the former classification; and
>
> (b) there is a difference between the incumbents receiving wages on the scale established for the former classification and another group of employees, predominantly of the same sex as the first group, who are performing work of equal value.

Little case law exists which deals with exemptions.

With the exception of several decisions under the Ontario legislation, there have been few cases where a tribunal has commented on the interpretation of these provisions; there has been no interpretation by the Canadian Human Rights Tribunal of the exemptions in the *Equal Wages Guidelines, 1986.* Baker and Gunderson have suggested that this lack of attention to the details of these exemptions in the case law is a sign that they have not been seen as having any very significant effect on the application overall of pay equity legislation in workplaces:

> The dearth of case law with respect to the issues of allowable exemptions could reflect the fact that such exemptions do not likely matter extensively to the parties – that is, they do not have a substantial effect on the magnitude of the adjustments that can occur, since they largely deal with exempting small numbers from the process.
>
> Michael Baker and Morley Gunderson. (2002). *Allowable Exemptions and Pay Equity.* Unpublished research paper commissioned by the Pay Equity Task Force, p. 10.

Minimal interpretive guidance.

The minimal interpretive guidance articulated by the Ontario Pay Equity Hearings Tribunal is an expression of caution about extending the reach of the exemptions in a way which would undermine the effectiveness of the legislation. In the decision in *Law Society of Upper Canada* v. *Unknown Respondents,*[5] for example, the Ontario Pay Equity Hearings Tribunal laid down the following principles with respect to the exemption for merit pay:

> 18. [...] Because such a merit system is an exception to the requirement to achieve pay equity otherwise contained in the Act, which is itself remedial legislation, the Tribunal will narrowly construe it. Hence, employers who seek to rely on it can expect their practices to be scrutinized carefully to ensure that they are consistently applied. Further, we must be satisfied that gender bias, which might not be apparent on the face of a merit system, does not creep in its application.

The following general principles have been drawn from what the Ontario Pay Equity Hearings Tribunal has said about the exemptions in the legislation of that province:

- Anti-discrimination statutes are to receive a liberal interpretation with exemptions to such legislation construed narrowly.
- The burden of proof is clearly on the party claiming the exemption and the [employer's] actions will be scrutinized carefully.
- Only that portion of the wage gap due to the exemption is eligible for exclusion from the calculation, implying that that portion must be delineated and measured.
- [As an illustration of the narrow construction accorded to these exemptions in Ontario,] differential bargaining strength applies across different job classes in different bargaining units within the organization, or between a unionized and a non-unionized class, but not between male and female job classes within the same bargaining unit.

Michael Baker and Morley Gunderson. (2002). *Allowable Exemptions and Pay Equity.* Unpublished research paper commissioned by the Pay Equity Task Force, p. 11.

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[5] *Law Society (No. 2)* (1998-99), 9 P.E.R. 35. The other Ontario cases which consider aspects of the provisions relating to exemptions are *Maclean's Magazine (No. 1)* (1993), 4 P.E.R. 16; *Welland County General Hospital* (No. 2) (1994), 5 P.E.R. 12; *Essex (1996),* 7 PER 83; *BICC Phillips (1997),* 8 P.E.R. 142; *Stevenson Memorial Hospital* (1999-2000), 10 P.E.R. 60; *Ongwanada* (2001-02), 12 P.E.R. 1.

Difficult to assess impact of exemptions.

The relative absence of comment or analysis concerning the exemptions which have been offered under pay equity legislation in Canadian jurisdictions makes it difficult to arrive at an overall assessment of the effect of these provisions. In their research paper for the Pay Equity Task Force, Baker and Gunderson comment as follows:

> The notion that the allowable exemptions have helped sustain a delicate balancing act is supported by the fact that there does not appear to be dramatic pressure for extensions or repeals of the exemptions that are in place in the different jurisdictions. This could be a sign of inertia, but it is also consistent with the notion that they are serving a purpose without extensively violating basic principles of program evaluation.
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> Michael Baker and Morley Gunderson. (2002). *Allowable Exemptions and Pay Equity.* Unpublished research paper commissioned by the Pay Equity Task Force, p. iv.

Changing nature of work may result in exemptions becoming more important in the future.

Despite this somewhat tentative conclusion, these writers also suggest that the appeal to flexibility which was the rationale for these exemptions originally may be an even stronger consideration in the future:

> It is the case that the changing nature of work and the workplace are such that these allowable exemptions are likely to become even more important over time. Merit or performance pay is increasing; labour shortages are impending; temporary training will be more prominent under job rotation, multi-skilling and life-long learning; and regional wage differences will be more prominent as wage patterns break down. But this suggests that the flexibility provided by the exemptions will be more important in the future and that such flexibility may be necessary to sustain stakeholder acceptability.
>
> Michael Baker and Morley Gunderson. (2002). *Allowable Exemptions and Pay Equity.* Unpublished research paper commissioned by the Pay Equity Task Force, p. 18.

Stakeholders are cautious but recognize need for flexibility.

Indeed, even stakeholders who are cautious about the possible effects of exemptions recognize the need for some flexibility and elasticity in the legislation though urging that these exceptions be confined as much as possible:

> The PSAC accepts that there may exist limited and narrowly defined circumstances that justify a difference in wages. These relate to personal rather than *job content* related factors and could include salary protection for employees affected by workforce adjustment, rehabilitation assignments or downward reclassification of a position, as well as allowances based on the geographical location of a job.
>
> Public Service Alliance of Canada (PSAC). Final submission to the Pay Equity Task Force, November 2002, p. 16.

It appears from these comments that some forms of exemptions are regarded as both necessary and tolerable. The difficulty is to identify those exemptions which may provide desirable flexibility without in themselves becoming vehicles for the perpetuation or reinforcement of discrimination. Because of the differing rationale and nature of the exemptions which have been included in Canadian legislation, it is necessary to consider in order each of the exemptions which have been tried, and to comment on whether it should be included as part of new pay equity legislation.

As a general proposition, we accept the position taken by the Ontario Pay Equity Hearings Tribunal that only the component of compensation which is affected by any of the exemptions permitted under the statute should be eliminated from pay equity comparisons.

Ontario's *Pay Equity Act*[6] also contains a provision which makes it clear that the onus is on the employer to demonstrate in very precise terms the reasons why an exemption should be permitted:

> 13. (2) If both female job classes and male job classes exist in an establishment, every pay equity plan for the establishment [...]
>
> (c) shall identify all positions and job classes in which differences in compensation are permitted by subsection 8(1) or (3) and give the reasons for relying on such subsection.

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[6] Ontario, *supra*, note 2, s. 13(2).

A provision of this kind clarifies the responsibility of the employer to show why and how the exemptions apply in a particular case. We would support the inclusion of a provision of this kind in new pay equity legislation.

12.1 The Task Force recommends that the new federal pay equity legislation provide that only the component of compensation which results from any allowable exemption should be eliminated from pay equity comparisons.

12.2 The Task Force recommends that the new federal pay equity legislation contain a provision making it clear that resort to any of the permitted exemptions must be justified in precise terms by an employer.

> The PSAC cautions against a more expanded definition of 'reasonable factors' given how closely they are tied to and incorporate market and related pressures that are intimately tied to the discriminatory assumptions and biases that result in differences in wages.
>
> Public Service Alliance of Canada (PSAC). Final submission to the Pay Equity Task Force, November 2002, p. 17.

Merit or Performance Pay

Concern that merit pay could be discriminatory.

In most of the jurisdictions which provide exemptions under pay equity legislation, one of those exemptions is for compensation which is based on merit or performance.[7] The way in which this exemption has been worded in legislation indicates a concern that it may become a means of increasing compensation based on favouritism or discriminatory assumptions. In the *Equal Wages Guidelines, 1986,*[8] this exemption is justified by:

> 16. (a) different performance ratings, where employees are subject to a formal system of performance appraisal that has been brought to their attention.

There are thus two caveats in these guidelines. One is that the basis on which merit pay is awarded should be systematic and that there should be formal criteria for determining merit pay. The other is that the merit pay system should be transparent and that the criteria must have been brought to the attention of employees so that they all have an opportunity to understand what is regarded as meritorious performance.

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[7] There is no such exemption in the Quebec legislation.

[8] Canada, *supra*, note 4.

To these two limitations, the legislation in Ontario,[9] New Brunswick,[10] Prince Edward Island[11] and Nova Scotia[12] adds a third – an explicit statement that the merit pay system must not discriminate on the basis of sex. Though not stated in exactly these terms, the same idea no doubt underlies section 17 of the *Equal Wages Guidelines, 1986*,[13] which applies to all of the exemptions listed in section 16:

> 17. For the purpose of justifying a difference in wages on the basis of a factor set out in section 16, an employer is required to establish that the factor is applied consistently and equitably in calculating and paying the wages of all male and female employees employed in an establishment who are performing work of equal value.

Compensation based on merit is not an important factor in all workplaces, and its significance is particularly diminished in unionized workplaces where the emphasis tends to be on standardized pay rates. It is clear that merit pay plays an important role in the human resource policies of many employers, and it is possible that it will assume increasing significance in some work environments.[14]

Merit pay systems are often described as a means of applying objective criteria to reward individual effort or capability. This focus on the characteristics of the individual rather than the job provides the rationale for exempting the portion of compensation attributable to merit payments from the calculations used to compare jobs for the purpose of pay equity.

Merit pay could contribute to discriminatory wage patterns.

It is clear, however, that merit pay systems are more likely to be connected with some jobs than with others. In addition, the focus on individual performance makes it inevitable that the criteria used in making the assessment of merit will have a high subjective component. This inevitable subjectivity opens the door to the application of the criteria in a discriminatory way or a way which may contribute to a discriminatory wage pattern. It is therefore essential that any system of merit pay be examined carefully to ensure that it is genuinely gender-neutral and does not operate as a vehicle for discrimination.

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[9] Ontario, *supra*, note 2, s. 8(1)(c).

[10] New Brunswick. *Pay Equity Act*, R.S.N.B., c. P-5.01, s. 4(c).

[11] Prince Edward Island. *Pay Equity Act*, R.S.P.E.I., c. P-2, s. 8(1)(a).

[12] Nova Scotia, *supra*, note 1, s. 13(4)(c).

[13] Canada, *supra*, note 4.

[14] Michael Baker and Morley Gunderson. (2002). *Allowable Exemptions and Pay Equity.* Unpublished research paper commissioned by the Pay Equity Task Force, p. 18.

In any merit pay system which is gender-neutral, one would expect to find the merit payments evenly distributed throughout the workforce of the enterprise. As a general rule, therefore, merit payments can be taken into account as part of the total compensation which is the basis for pay equity analysis.

In Chapter 11, which addresses issues related to compensation, we show how account can be taken of systems of performance or merit payments which are gender-neutral as part of the overall process of calculating total compensation. Given the broad approach to defining compensation which has developed in relation to pay equity legislation, we are persuaded that this issue can be fully considered as a component of compensation, and that it does not need to be further provided for as an exemption.

Seniority

Seniority is almost universal in unionized settings.

The compensation structures in many workplaces are based at least in part on increasing monetary rewards according to the length of time which an employee has worked for the employer. Seniority systems are almost universal in unionized workplaces, but they are not uncommon in non-unionized settings, as they offer a clear and easily understood basis for compensation decisions.

Conceptually, seniority is independent of other considerations, though in practice it is difficult to disentangle it from the factors of skill, effort, responsibility and working conditions of the job which are essential to pay equity comparisons.[15] It does seem possible nonetheless to isolate fairly accurately that aspect of compensation which is attributable to seniority.

In most of the legislation which contains this exemption[16] the provision is framed explicitly in terms of seniority systems which do not discriminate on the basis of gender. The provision in Quebec's *Equal Pay Act*, for example, provides that wage differences based on seniority will not be taken into account "unless this factor is applied so as to discriminate on the basis of gender."[17] The *Equal Wages Guidelines*, 1986 do not refer explicitly to this, although the qualification set out in section 17 applies to the seniority exemption as well as to the other parts of section 16.

There is, of course, an argument to be made that all seniority systems have a differential impact on women, as their family and care-giving responsibilities mean that the pattern of their service for an employer is different than that of male employees. On the other hand, many seniority systems now make provision for female employees to retain their accrued seniority while they are carrying out their other responsibilities. In any case, a compensation system with a seniority component recognizes the service of female employees according to an objective criterion, and it may thus be argued that it is less discriminatory in its impact than some other kinds of compensation systems.

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[15] Ibid., p. 3.

[16] The legislation of Ontario, Quebec, Nova Scotia, New Brunswick and Prince Edward Island.

[17] Quebec, *supra*, note 3, s. 67. 1.

We are therefore suggesting that the aspect of compensation attributable to seniority should be exempt for the purposes of pay equity comparisons, with the caveat that the system itself should not be inherently discriminatory or applied in a discriminatory way.

Red-Circling

The term "red-circling" refers to the practice of maintaining the wages of an employee at a particular level even though the wage rate for the job has changed for some reason. The following are some examples of circumstances in which red-circling may occur.

> The job itself could be *downgraded* but the pay is not downgraded until the job is occupied by a new employee, with the incumbent employee receiving his or her regular pay. Injured employees may be kept at their original pay while they are under *rehabilitation* and temporarily assigned to a less onerous job (an increasingly important phenomenon, given the legislative requirement to "reasonably accommodate" the return to work of injured workers). Employees may also be *demoted* to a lower-level job, perhaps because of unsatisfactory performance. However, the employer may not lower an employee's pay if, for example, the employer feels that the unsatisfactory performance was beyond the employee's control, resulting, for instance, from illness or injury, an increase in the complexity of the job, or an internal labour surplus that required reallocating employees out of such jobs. The employee may be *reclassified* to a lower-level job but continue to be paid at the old rate.
>
> Michael Baker and Morley Gunderson. (2002). *Allowable Exemptions and Pay Equity.* Unpublished research paper commissioned by the Pay Equity Task Force, pp. 3-4.

It is clear that red-circling creates a wage level for specific employees which is inconsistent with any criteria established by an employer to attach value to a job. The rationale for tolerating these anomalies is one of fairness to individual employees who are facing workplace changes which have come about through no fault of their own, but which put at risk the income on which they have come to depend.

Red-circling is usually recognized as an exemption.

In a number of jurisdictions, statutes dealing with pay equity have recognized that wage levels established as a result of red-circling represent a legitimate exception to the normal requirements for comparing jobs. In Quebec's *Pay Equity Act*[18] the exemption covers

> 67. 5) red circling, that is, a situation where a person's compensation is maintained, following a reclassification, demotion or special arrangement for the handicapped, at its former level until the compensation in the person's new job class attains that level.

In Ontario's *Pay Equity Act*,[19] the exemption is worded in more generic terms, and refers to

> 8.(1)(d) the personnel practice known as red-circling, where, based on a gender-neutral re-evaluation process, the value of a position has been down-graded and the compensation of the incumbent employee has been frozen or his or her increases in compensation have been curtailed until the compensation for the down-graded position is equivalent to or greater than the compensation payable to the incumbent.

The *Equal Wages Guidelines, 1986*[20] do not use the term "red-circling" specifically, but they do describe several scenarios in which this practice is utilized. Section 16 refers to the following circumstances as being reasonable factors:

> 16. (c) re-evaluation and downgrading of the position of an employee, where the wages of that employee are temporarily fixed, or the increases in the wages of that employee are temporarily curtailed, until the wages appropriate to the downgraded position are equivalent to or higher than the wages of that employee;

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[18] Quebec, *supra*, note 3, s. 67.5.

[19] Ontario, *supra*, note 2, s. 8(1)(d). An identical provision is contained in the New Brunswick *Pay Equity Act*, *supra*, note 10, s. 4(d).

[20] Canada, *supra*, note 4.

(d) a rehabilitation assignment, where an employer pays to an employee wages that are higher than justified by the value of the work performed by that employee during recuperation of limited duration from injury or illness;

(e) a demotion procedure, where the employer, without decreasing the employee's wages, reassigns an employee to a position at a lower level as a result of the unsatisfactory work performance of the employee caused by factors beyond the employee's control, such as the increasing complexity of the job or the impaired health or partial disability of the employee, or as a result of an internal labour force surplus that necessitates the assignment;

(f) a procedure of gradually reducing wages for any of the reasons set out in paragraph (e);
[...]

(i) a reclassification of a position to a lower level, where the incumbent continues to receive wages on the scale established for the former classification.

The practice of red-circling has clear implications for any system which is designed to achieve pay equity. On the one hand, it creates wage levels which are artificially high for certain employees, and thus represents a deviation from a system which depends for its effectiveness on the use of objective criteria to assess the relative value of work. Used without restriction, it is possible that the practice would create difficulties in analysing a compensation structure for the purposes of pay equity.

On the other hand, the practice of red-circling has its origins in ideas of compassion and fairness with respect to employees who are negatively affected by corporate change, illness or injury over which they have no control. In order to mitigate the harshness of these changes, the wages of individual employees are frozen at a higher level until the wage level attached to their job is back in its appropriate relationship with the values of other jobs.

This may be contrasted with the basic character of pay equity programs, which are directed at the examination of the systemic impact of compensation structures. The overall intention of these programs is to produce, through the pay equity process, a pattern of compensation which does not discriminate against women. This does not seem to us inconsistent with permitting compassionate treatment of individual employees on a temporary or transitional basis.

Nor does it seem to us, in practical terms, difficult to distinguish these instances of accommodation to individual circumstances from the wage patterns and compensation practices which are the subject of pay equity analysis. Concerns about the potential use of red-circling as a means of evading pay equity obligations can, in our view, be met by carefully defining the circumstances in which red-circling legitimately occurs.

It is not legitimate, for example, to use red-circling as a means of preparing an artificial wage pattern prior to undertaking pay equity analysis, and the definitions in the statute should make it clear that this is not permitted.

It is our opinion that a form of legislation, such as the Quebec legislation or the *Equal Wages Guidelines, 1986,* which lists the appropriate situations in which red-circling will be regarded as an exemption is preferable to the more generic form of the exemption contained in Ontario's *Equal Pay Act.*

Skills Shortages

When they have difficulty in recruiting and retaining employees whose skills are in short supply, many employers respond by attaching higher wages to particular jobs. Certain kinds of skills may be chronically scarce, and this may affect the perception of the value of these jobs which is the basis of pay equity analysis. In general, however, problems of recruitment and retention tend to be of a more cyclical nature, and are not viewed as having a fundamental connection to the jobs in question. Though there are difficulties, particularly in unionized environments, in removing the premiums attached to particular jobs because of labour shortages, many employers continue to use higher wage rates to attract and retain employees in a competitive market environment.

Need some flexibility to accommodate skill shortages.

In a number of Canadian jurisdictions, the need for some flexibility to accommodate this kind of market pressure has been recognized by the exemption from pay equity comparison of wage levels which are set in response to skills shortages. In Ontario, the *Pay Equity Act*[21] contains an exemption for

> 8(1)(e) a skills shortage that is causing a temporary inflation in compensation because the employer is encountering difficulties in recruiting employees with the requisite skills for positions in the job class.

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[21] Ontario, *supra*, note 2, s. 8(1)(e). The legislation of Prince Edward Island, Nova Scotia and New Brunswick contain very similar wording.

The Quebec legislation refers succinctly to a "shortage of skilled workers."[22] The *Equal Wages Guidelines, 1986*[23] speak in terms of "the existence of an internal labour shortage in a particular job classification."

Like other aspects of these statutory exemptions, there is little in the way of formal interpretation to indicate how this factor has been addressed in practice. The Ontario Pay Equity Hearings Tribunal did deal with the issue in a decision in *Anonymous Group of Employees* v. *Melitta Canada*,[24] and indicated what an employer must demonstrate in order to take advantage of the exemption:

> 20. An employer is required to show that the difference in compensation is a result of difficulties it experienced in recruitment of employees with the requisite skills for the position. It is not entitled to simply rely on market trends if it has not itself encountered the difficulties anticipated in the subsection. The employer is also required to show that the inflation in compensation is temporary.

General appeals to market forces are not sufficient for exemption.

The Ontario tribunal has thus taken the position that general appeals to market forces will not be sufficient to demonstrate eligibility to take advantage of the exemption; an employer must be able to point to specific difficulties in recruiting employees for particular jobs. Under the Ontario legislation, the employer must also demonstrate that the change in wage levels is of a temporary nature, and is directly tied to a particular set of market conditions.

In our consultations with stakeholders, a number of employers alluded to difficulties with recruitment and retention in relation to certain kinds of employees, particularly in areas involving new technologies and specific professional skills. They indicated that they had found it necessary to respond to these shortages by offering higher wages. In the case of the federal Public Service, for example, the Treasury Board has negotiated, with bargaining agents, a number of terminable allowances to address these problems. In their submissions to us, a number of employers argued that any new pay equity regime should provide them with flexibility to deal with market influences through wage adjustments.

We accept that employers should enjoy some flexibility which would allow them to attract and retain the skilled employees they need to operate their enterprise, and we are therefore recommending that pay equity legislation contain an exemption for shortages of skilled labour. We suggest, however, that this exemption should be formulated in terms which will require employers to describe the particular difficulties with recruitment and retention which they face, and that any exemption on this basis be of a temporary nature. In making their case for exemption, employers should be required to present data from an objective source which will accurately portray current economic and labour market conditions. The information available from Human Resources Development Canada concerning labour trends, including the incidence of job vacancies in various industries, is an example of the kind of data which should be presented in this context.

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[22] Quebec, *supra*, note 3, s. 67. 4.

[23] Canada, *supra*, note 4, s. 16 (h).

[24] *Melitta Canada Inc. (No. 2)*, (1995) 6 P.E.R. 214, paragraph 20.

Employers must demonstrate the need for an exemption due to skill shortages.

The current wording in section 16(h) of the *Equal Wages Guidelines, 1986* addresses "internal" labour shortages only. Although it is not altogether clear why the provision is restricted in this way, it may have something to do with the posting requirements for job vacancies in the Public Service. In our view, the exemption, in order to be clear, should refer in a more general way to "skills shortages" to emphasize the need to show how the difficulties with the recruitment and retention of employees which are experienced by specific employers are tied to objective factors in the external economic environment. Neither does section 16(h), in our view, make it sufficiently clear that employers are required to demonstrate the specific difficulties they are having with finding particular kinds of employees, and that the proposed exemption is of a temporary nature. We would therefore favour wording more similar to that set out in the Ontario legislation.

Regional Pay Rates

Section 16(j) of the *Equal Wages Guidelines, 1986*[25] permits an exemption for

> 16. (j) regional rates of wages, where the wage scale that applies to the employees provides for different rates of wages for the same job depending on the defined geographic area of the workplace.

Of the provincial jurisdictions, only Quebec[26] provides an exception for

> 67. 3) the region in which the employee works, unless this factor is applied so as to discriminate on the basis of gender.

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[25] Canada, *supra*, note 4.

[26] Quebec, *supra*, note 3, s. 67. 3. It should be remembered that the Ontario pay equity legislation uses a geographic basis in defining the establishment for pay equity purposes.

In some cases, differences in pay which are based on geographic location may be tied to adverse working conditions; in such cases, it is possible to assess the effect these considerations may have on the value of the work through the ordinary processes of pay equity analysis.

It appears from our discussions with stakeholders that they see it as important to permit federal employers, particularly large employers with employees spread across the country, to modify their compensation practices to take account of local economic conditions and local labour markets. Though section 16(j) of the *Equal Wages Guidelines, 1986* is not precise on this point, we do not read it as governing the general adaptation of pay policies to respond to local economic conditions. Indeed, we have addressed this aspect of regional wage variation in Chapter 7 of this report, where we suggested that it is relevant to the definition of the pay equity unit which will be the basis of comparisons.

Bonuses paid for isolation, travel time or inconveniences may be considered for an exemption.

There is one limited aspect of regional variation in wages, however, which it is appropriate to deal with by way of an exemption. This is the situation where individual employees are paid an explicit bonus for such factors as travel time, isolation or inconvenience which are not experienced by other employees in the same pay equity unit in connection with the same job. If one federal government scientist does all of her work in a lab in Regina, for example, while a scientist in the same job, also based in Regina, must travel to a research station in Lafleche, Saskatchewan, three times a week, such a bonus might be paid.

12.3 The Task Force recommends that the new federal pay equity legislation provide that the aspects of compensation attributable to the following factors be exempted from the calculation of compensation for the purposes of pay equity analysis:

- **payments based on seniority where the seniority system is not inherently discriminatory and is not applied in a discriminatory way;**
- **the portion of a wage rate which is "red-circled" in one of the following circumstances, provided that the rate is only red-circled until the wage rate appropriate to the job under the pay equity plan is the equivalent of the red-circled rate:**
    - **re-evaluation and downgrading of the position of an employee;**

  - **a rehabilitation assignment, where an employer pays to an employee wages that are higher than justified by the value of the work performed by that employee during recuperation of limited duration from injury or illness; and**
  - **a demotion procedure or gradual reduction of wages, where the employer reassigns an employee to a position at a lower level for reasons such as the increasing complexity of the job or the impaired health or partial disability of the employee, or as the result of an internal labour force surplus that necessitates the assignment; and**
- **a shortage of skilled labour, this exemption to be worded in terms which make it clear that employers must show how this wage premium is linked to their specific problems of recruitment and retention, and how it is intended to phase out the additional payments when the shortage ceases; and**
- **payments to employees which are specifically attributable to geographic factors, subject to a requirement that the employer be able to justify specific regional distinctions, and that the payment system is free of gender bias.**

Bargaining Strength

The provision in Ontario's *Pay Equity Act*[27] that recognizes "bargaining strength" as an allowable exemption for the purposes of pay equity comparisons once pay equity has been achieved is unique in Canadian legislation. This provision reads as follows:

> 8. (2) After pay equity has been achieved in an establishment, this Act does not apply so as to prevent differences in compensation between a female job class and a male job class if the employer is able to show that the difference is the result of differences in bargaining strength.

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[27] Ontario, *supra*, note 2, s. 8(2).

Rationale for bargaining strength as an exemption.

The rationale for this exemption has been explained in the following terms:

> At first glance, this exemption would appear to be a concession to unions to use their bargaining strength to win wage premiums. Otherwise, unions could be concerned that their role in achieving wage gains for their members could be replaced by the "scientific, objective" procedures of job evaluation procedures. With their role in wage determination being limited to providing input into the job evaluation procedures, the need for unions on the part of employees may be perceived as considerably curtailed.
>
> Employers also, however, may prefer this exemption because it could curtail the "leapfrogging" that otherwise may occur if higher union wage settlements (in situations where unions have considerable bargaining strength) in predominantly male-dominated comparator jobs could automatically lead to subsequent pay equity adjustments in female-dominated jobs [...] or if unions were prepared to exercise that strength more in such jobs.
>
> While such an exemption may have occurred to accommodate both unions and employers (and thereby perhaps to reduce resistance to the passage of the legislation) it does seem to "fly in the face" of basic principles of pay equity.
>
> Michael Baker and Morley Gunderson. (2002). *Allowable Exemptions and Pay Equity.* Unpublished research paper commissioned by the Pay Equity Task Force, p. 7.

There has been little formal analysis in Ontario of the significance of this exemption, perhaps because the focus under the legislation in that province has so far been on achieving pay equity, and not so much on subsequent phases of pay equity maintenance. In one decision,[28] the Ontario Pay Equity Hearings Tribunal did come to the conclusion that the exemption was meant only to apply to comparisons which crossed bargaining units or comparisons between unionized and non-unionized employees in an establishment, and not to exempt comparisons of jobs within a unit represented by one union.

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[28] *Stevenson Memorial Hospital* (1999-2000), 10 P.E.R. 60.

Bargaining strength is not easily linked to specific and temporary wage anomalies.

Unlike other issues which have been the basis for exemptions discussed earlier in this chapter, bargaining strength is not easily linked to specific and temporary wage anomalies which can be isolated from the underlying wage patterns for the purpose of pay equity analysis. Bargaining strength represents a basic feature of the process of determining wages in a unionized workplace and, like the overall market forces of supply and demand,[29] its effects are impossible to distinguish from the factors which gave rise to discriminatory wage patterns in the first place.

In Chapter 16 of this report, we will be examining the implications of pay equity legislation for collective bargaining. In this context, we will indicate that we think the existence and configuration of collective bargaining relationships should not be allowed to screen discriminatory compensation practices from scrutiny, or to import discriminatory assumptions into the consideration of pay equity objectives. Rather, we express our view that it is incumbent on employers—and, in a slightly different sense, trade unions—to appraise compensation structures rigorously and with an eye to the possibility that notions of "bargaining strength" and "community of interest" may carry with them traditional gender biases. If there are good reasons for an employer to bow to the bargaining strength of a trade union, these may in any case be explicable in terms which are already acceptable under pay equity legislation—as a response to labour market skill shortages, for example, or regional variations in wages.

Bargaining strength should not be an exemption.

We are therefore not recommending that bargaining strength be the basis of an exemption under federal pay equity legislation.

In 1993, a related exemption was enacted through regulations[30] in Ontario, which exempts wage increases determined by an arbitrator or other tribunal:

> 1. The requirement to maintain pay equity for any female job class is limited in the manner prescribed in this Regulation where,
>
> (a) a male job class has been used as the basis of a job-to-job comparison to a female job class in a pay equity plan; and

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[29] Michael Baker and Morley Gunderson, *supra*, note 14, p. 7.

[30] *Ontario Regulation 491/93*, s. 1.

(b) the compensation for that male job class is increased as a result of the decision of an arbitrator, board of arbitration or other tribunal other than a decision that results from the failure of the parties to a collective agreement to reach an agreement in the course of bargaining for a collective agreement or the renewal of one.

This provision appears to apply, not to a consensual interest arbitration which is used by the parties to resolve a bargaining impasse, but to arbitration or other proceedings which come about as a result of statutory requirements or explicit legislative action. In *Stevenson Memorial Hospital* v. *Ontario Public Services Employees Union,*[31] for example, the Ontario Pay Equity Hearings Tribunal dealt with the application of this provision to an arbitration award under the *Hospital Labour Disputes Arbitration Act.*[32]

Interest arbitrators or other tribunals.

The decisions which are the subject of this provision are those made by interest arbitrators or other tribunals which set terms and conditions of employment for workers in circumstances where the legislature has determined that this means of dispute resolution is more tolerable than industrial action. The decisions in question are typically being made in situations where there is a high degree of tension between the bargaining parties, and where there is considerable public sensitivity to the outcome.

These factors do not, in our view, constitute a sufficient justification for permitting interest arbitrators or other decision-makers to deviate from the principles enshrined in pay equity legislation. Though arbitrators must be given adequate latitude to arrive at decisions which will be satisfactory to both the collective bargaining parties and the public, they must make their decisions within a legal framework which precludes certain avenues. It would seem to us anomalous if arbitrators were excused from taking account of pay equity legislation as a component of this legal framework, and permitted to make their decisions without regard to this important manifestation of legislative policy.

We are therefore not recommending that this exemption be included in new federal pay equity legislation.

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[31] *Stevenson Memorial Hospital* (1999-2000), 10 P.E.R. 60.

[32] Ontario. *Hospital Labour Disputes Arbitration Act.* R.S.O. 1990, c. H.14.

Benefits for Temporary, Casual and Seasonal Workers

Under Quebec's *Pay Equity Act,*[33] while the wages of temporary, casual and seasonal workers are included within the scope of the legislation for the purposes of pay equity comparisons, the following item is excluded from these comparisons:

> 67. 6) Non-enjoyment of benefits having pecuniary value by reason of the temporary, casual or seasonal nature of a position.

Contingent workers are commonly excluded from non-wage benefits.

This exemption is intended to take account of the fact that temporary, casual and seasonal employees are commonly excluded from benefits such as pension plans, disability coverage, health and dental plans, and various kinds of paid leaves, which are offered to employees with a more regular kind of attachment to the job. In the same way that seniority systems entitle employees to regular increments in wages, access to these benefits is often triggered by a certain length of service or number of hours worked by an employee.

There have been some modest changes in the direction of providing access to fringe benefits for part-time and seasonal employees. For example, legislative changes have been made to the regulation of registered pension plans, and this has led to increased pension coverage for some of these employees.[34] Part-time or seasonal employees, particularly where they are represented by unions, have succeeded in some instances in obtaining access to benefits; the dental plan in the federal Public Service, for example, is available to part-time workers whose hours per working week are at least one-third of those of full-time employees.

The fact remains that the odds of having access to fringe benefits, such as pension coverage, drop sharply for part-time and seasonal employees[35] and that women are disproportionately represented in this type of employment.

The exemption in the Quebec legislation reflects a policy decision allowing employers to differentiate between employees with greater and lesser degrees of attachment to the job in this way. Where a job class is entirely or predominantly occupied by employees of this type, the exemption provision is not difficult to apply.

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[33] Quebec, *supra,* note 3, s. 67. 6.

[34] Brenda Lipsett and Mark Reesor. (1997). *Employer-sponsored Pension Plans – Who Benefits?* Ottawa: Human Resources Development Canada, Applied Research Branch, Strategic Policy.

[35] Ibid.

The terms of the provision, however, appear to extend beyond this scenario to cover "positions" which might be only part of a job class. It has been pointed out that the calculations necessary to apply this exemption in all such cases would be quite complicated. As the jobs done by these employees are included for purposes of pay equity comparisons, it would be necessary to calculate how the absence of benefits in their case would affect the total compensation levels being used in the comparisons for regular employees. In order to gain a picture which is not skewed by the presence of these employees in the job class, it might be necessary to assign some notional value to the benefits these employees are not receiving,[36] and this would create the risk of distortions and inaccuracies in the comparisons.

Contingent workers should not be excluded from pay equity programs.

In Chapter 7 of this report, we have recommended that casual, temporary and seasonal employees should not be excluded from pay equity programs, and that they should have an opportunity to benefit from wage adjustments which are made in respect of their jobs like other members of the workforce. The high degree to which women are represented in this kind of employment suggests that it is part of the pattern of occupational segregation which is the basis of discriminatory wage practices. Excluding fringe benefits from consideration when pay equity analysis is taking place would make it difficult to obtain a complete picture, and to identify all of the sources of discrimination which may be present.

We are therefore recommending that the new legislation not adopt this aspect of the Quebec statute.

Conclusion

Though there has been little litigation or commentary with respect to the exemptions provided under Canadian pay equity legislation, these "reasonable factors" seem to provide flexibility which is valued by stakeholders. As they provide only restricted opportunity to deviate from the fundamental principles of pay equity, they do not seem to have been the subject of attack on the grounds that they have undermined the system.

In an assessment of the exemptions to pay equity legislation according to a number of evaluation criteria, Baker and Gunderson found very little indication that the exemptions have had any pronounced effect on the overall course of pay equity policy:

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[36] Michael Baker and Morley Gunderson, *supra*, note 14, p. 8.

> By way of a broad-brush picture, the allowable exemptions appear to facilitate allocative efficiency as well as acceptability to stakeholders (i.e., positive entries for those items) but at the expense of often violating elements of vertical equity (i.e., negative entries for that column). The negative entries for vertical equity tend to occur because the exemptions (especially for merit, seniority, shortages and bargaining strength) tend to move away from providing differential assistance to the target group of women in "undervalued" female-dominated jobs. The positive entries for allocative efficiency tend to occur because these exemptions tend to be concessions towards market-based principles of supply and demand that justify wage differentials for merit, temporary training, shortages and regional differences – wage differentials based on principles of allocating labour to its most efficient uses. When pay equity conflicts most egregiously with such market-based principles, then exemptions are allowed. The positive entries for the criteria of stakeholder acceptability highlight the fact that the exemptions are also concessions to stakeholders to accommodate their most serious concerns over pay equity. This may be a pragmatic concession that is necessary to get pay equity legislation passed and to reduce the likelihood that it would be repealed or "allowed to die" by not being supported administratively. The absence of a positive or negative entry for the other criteria suggests that the exemptions neither strongly violated nor adhered to that evaluation principle.
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> Michael Baker and Morley Gunderson. (2002). *Allowable Exemptions and Pay Equity.* Unpublished research paper commissioned by the Pay Equity Task Force, p. 17.

Exemptions can be used but must be subject to a number of conditions.

As we have indicated in this chapter, we think there is a place for these exemptions, subject to the conditions which have been suggested both in the current legislation and in the discussion of them by the Ontario Pay Equity Hearings Tribunal:

- that they be clearly defined;
- that they be applied in a way which does not discriminate;
- that the onus be on the employer to demonstrate that it is necessary to apply them in any given situation; and
- that they be given a restrictive interpretation.

Chapter 13 – Maintenance of Pay Equity

Maintaining pay equity means that wage gaps must not be created or reappear.

Once a pay equity plan has been implemented, changes may affect any of its components and result in new discriminatory wage gaps between jobs which were determined to be of equal value during the pay equity process. Modern organizations are subject to frequent changes: new technology, changes in work organization, new products or services, new markets, or outsourcing of certain divisions. When many changes occur over a number of years, application of the pay equity principle may weaken considerably. That is why the issue of maintenance must be an important part of proactive pay equity legislation. Maintaining pay equity generally means that wage gaps identified and eliminated under the pay equity plan must not reappear and new gaps must not be created. In this chapter, we will examine the general framework for maintenance in proactive legislation and specifically consider situations that require particular attention.

General Framework for Maintenance

Must be clear and specific maintenance provisions.

A number of studies have found that, without clear and specific provisions regarding pay equity maintenance, many persons in charge of pay equity appear not to understand that obligation, though it is required by law.

> Maintenance is performed infrequently, with only one employer reporting an annual review which might bring maintenance issues to light. Few organizations and union/management groups have formal monitoring/control systems in place to flag potential maintenance issues, and both groups are likely to be alerted to maintenance concerns affecting non-union and bargaining unit positions through a request or complaint from an employee.
>
> Gail E. Lawrence. (2003). *Models and Best Practices for Pay Equity Maintenance.* Unpublished research paper commissioned by the Pay Equity Task Force, p. 20.

Although all of the respondents were forced to delve deep into their individual and collective memories of the historical passing of the implementation of pay equity, they all seemed to be somewhat miffed as to how, if at all, pay equity had been maintained. One employee offered that. We don't know (if pay equity is being maintained). Who are we being compared to? ...I haven't heard from anyone about pay equity lately so I don't know if it's being maintained." A management representative confirmed that there is no real plan for maintaining pay equity: "The maintenance, that is probably where we have fallen down. We put a lot of work into ensuring that the tool was gender-neutral, [...] (but) we don't use it to check on an ongoing basis [...].There's no real follow-up." Similarly, a union representative added that "Quite frankly, I don't think we have a very good idea of how pay equity is to be maintained.

Gordon DiGiacomo and Paul Carr. (2003). *International Nickel Company Ltd. (INCO): A Case Study in Pay Equity Implementation.* Unpublished research paper commissioned by the Pay Equity Task Force, p. 18.

A specialist in the field summarizes the situation, which appears to be widespread:

> In spite of the fact that maintenance is specified in the legislation, many of my clients seemed to think that once it was "done" and the plan posted, they could forget about it.[1]

After implementation, old attitudes may remain, and old practices may resurface.

Another difficulty stems from the fact that pay equity implementation does not necessarily result in a quick and generalized change of perceptions regarding women's work. In some organizations, conventional evaluation and pay practices may be reintroduced, and stubborn stereotypes may resurface.

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[1] S. Savage. (1990). *How to Maintain Pay Equity after Your Plan Has Been Posted.* Pay Equity Guide. Vol. 3, No. 6, June 1990, p. 43.

> Other organizational spokespersons indicated that the most senior levels of management, or indeed the organization's policy-making body, either misunderstood pay equity to be a "one-time" event or project with little or no long-term impact on traditional pay systems and processes, or remain unmoved in their attitudes towards the traditional value of women's work in their organizations. Individuals who shared these experiences with us also shared common difficulties within their organizations: a lack of appropriate resources to adequately monitor and take appropriate corrective action to maintain equitable rates; and a lack of support to take the initiative in dealing with maintenance issues and related conflicts when wage issues related to maintenance are raised.
>
> Gail E. Lawrence. (2003). *Models and Best Practices for Pay Equity Maintenance.* Unpublished research paper commissioned by the Pay Equity Task Force, p. 19.

Legislation must include clear criteria to ensure maintenance.

Simply stating the principle of maintenance in the legislation thus appears ineffective. Care must be taken to specify the criteria and the terms of its application. The legislation must provide a clear and detailed framework for the obligation to maintain pay equity, as well as any resulting obligations.

> Maintaining pay equity once it is established is a critical question and should be a requirement of the legislation. There should be a mandatory review by the parties of their pay equity plan in each of the following circumstances: every three years; every time a new collective agreement is negotiated with the employer; and following every major structural change in the employer's establishment.
>
> Canadian Labour Congress (CLC). Final Submission to the Pay Equity Task Force. November 2002, p. 9.

The Nova Scotia Pay Equity Commission also notes the importance of maintenance in the pay equity process:

> Pay equity, once achieved, is vulnerable to erosion as workplace hierarchies evolve. To secure and maintain equity takes either unique employer

commitment or a legislated responsibility shared between the employer and the employee representative or bargaining unit.

Under current legislation, the pay equity adjustments agreed to by employers and employees become the formalized record of equitable pay for specified male- and female-dominated job classes. Public sector pay equity was created without a legislative requirement to keep future compensation practices consistent with pay equity agreements. If employees are not satisfied that the employer and the collective bargaining process are maintaining pay equity, they have no recourse under the act.

The Nova Scotia act established a proactive audit process within an established pay equity process time frame and is then silent on the matter. The Pay Equity Commission was not given authority beyond the achievement phase to monitor compensation practices in relation to pay equity.

The Commission's opinion is that a broad, pervasive obligation for employers to prevent discriminatory elements encroaching on the salary-setting practices of an organization is required. No employer or bargaining unit should have the ability to bargain for or agree to compensation practices that are inconsistent with pay equity maintenance. Employees need to have a legal right to complain to the Pay Equity Commission if they believe that compensation practices are not in compliance with the act.[2]

The Obligation to Maintain Pay Equity

Employers responsible for maintenance.

In Ontario and Quebec, the pay equity legislation clearly states that the employer is responsible for maintaining pay equity in the organization. Since employers are responsible for achieving pay equity, they must continue to maintain it in the face of changes that may create wage gaps between predominantly female and equivalent predominantly male job classes. In Chapter 14, which deals with enforcement of the legislation, we will be suggesting remedial and enforcement measures for inclusion in the legislation. These measures would apply where a breach of the obligation to maintain pay equity occurs.

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[2] Nova Scotia Pay Equity Commission. *Annual Report for the fiscal year ending March 31, 1999*, pp. 25-26, http://www.gov.ns.ca/enla/pubs/payeq99.pdf.

Unions also bear responsibility for maintenance.

When a collective agreement is being negotiated, some responsibility for maintenance also falls to the union. Proactive pay equity legislation recognizes this fact. The Quebec *Pay Equity Act*, for example, stipulates in section 40, paragraph 2, that the certified union must also ensure that pay equity is maintained when negotiating or renewing a collective agreement. That responsibility means that the union cannot negotiate wage increases solely for predominantly male job classes without extending the increases to predominantly female job classes. This does not mean the union's responsibility also extends to any other wage inequity that may affect other bargaining units or non-unionized employees as a result of its own negotiations.

13.1 The Task Force recommends that the new federal pay equity legislation include a provision indicating that once the pay equity plan has been implemented, the employer is obligated to maintain pay equity and ensure that the maintenance process is gender-neutral and inclusive.

13.2 The Task Force recommends that the new federal pay equity legislation provide that a trade union has an obligation, insofar as it has the power to do so, to see that pay equity is maintained with respect to its members when renewing a collective agreement or negotiating a new collective agreement.

The Pay Equity Committee

Joint pay equity committee should ensure maintenance of pay equity plan.

Given the continuity that must exist between achieving and maintaining pay equity, ideally the pay equity committee that implemented the plan would also ensure its maintenance, barring major changes such as a change in the organization's legal structure. In fact, these committee members will have become very knowledgeable about the content of the jobs in the organization, its pay system, and the use of pay equity methods and tools. After the plan has been implemented, they will be better equipped to judge the impact of changes in the organization. In a survey on pay equity maintenance, respondents indicated that the fact that they were familiar with the tools and considered them reliable made it easier to maintain pay equity.[3]

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[3] Gail E. Lawrence. (2003). *Models and Best Practices for Pay Equity Maintenance.* Unpublished research paper commissioned by the Pay Equity Task Force, p. 16.

Committee membership should resemble that described in Chapter 8.

This does not mean, of course, that all committee members will continue to sit on the pay equity committee indefinitely. The committee's membership may change for various reasons—for example, members may leave the organization or take on new responsibilities. The committee's structure and membership, however, should still correspond to those described in Chapter 8.

13.3 The Task Force recommends that the new federal pay equity legislation provide that once the pay equity plan is implemented, the pay equity committee is responsible for ensuring that pay equity is maintained.

Training and Information

Additional training needed to maintain pay equity.

As we will see later, knowledge in addition to that required to develop a pay equity plan is required to maintain pay equity. The employer's obligation to train committee members therefore must continue in order to prevent the type of situations that have occurred in some organizations:

> Several respondents spoke of difficulties encountered due to limited internal resources which include lack of funding to support training, associated lack of internal expertise and knowledge and staff turnover, which has meant that the knowledge acquired by individuals who were involved in implementation has been lost.
>
> Gail E. Lawrence. (2003). *Models and Best Practices for Pay Equity Maintenance.* Unpublished research paper commissioned by the Pay Equity Task Force, p. 17.

Training related to maintenance of pay equity is critical.

Training for maintenance should both foster skills at dealing with technical issues and equip committee members to identify and combat discriminatory bias. The training would thus follow the same model that was offered for developing the pay equity plan.

The information required must deal in particular with any changes that may affect the elements of the pay equity plan and its results.

> Monitoring of other bargaining units was helpful in avoiding maintenance issues where there are cross-group comparisons and collective bargaining agreement language requiring the employer to provide annual financial information for pay equity purposes.
>
> Gail E. Lawrence. (2003). *Models and Best Practices for Pay Equity Maintenance.* Unpublished research paper commissioned by the Pay Equity Task Force, p. 16.

We have recommended that an employer have an obligation to provide training and information to support committee members during the development of the pay equity process and this applies to the maintenance stage as well.

The Principle of Continuity

Pay equity implementation and maintenance are not separate issues.

Maintenance of pay equity is a direct extension of the pay equity plan. Those stakeholders who have had relatively little experience with the pay equity process may view the pay equity plan and the maintenance process as two separate issues. This ignores the fact that, in both cases, the same issues are at stake and the same objectives are targeted. Today's wage gaps are the result of an ever-changing, dynamic economy where certain adaptations to these changes have been influenced by prejudices, stereotypes, and management practices that devalue women's work. Pay equity maintenance is an integral part of a changing economy from which these prejudices, stereotypes and practices have not necessarily disappeared. That is why, under proactive pay equity legislation, the same principles, criteria and methods used to develop the pay equity plan must also be used during the maintenance process. There cannot be two separate systems with different standards—one system for developing the plan and another for maintaining its results.

Same methods, tools and processes used for plan development must be used in maintenance.

To ensure the principle of continuity inherent to pay equity maintenance, the pay equity committee must use the same methods, tools and processes that were used to develop the plan. Thus, the non-discriminatory evaluation method used for the plan must be used to maintain pay equity. This means using the same questionnaire to collect job data, using the same method to compare wages. The legislation should specify that requirement, which does not appear to have been respected in certain organizations. As Nan Weiner asserts, there cannot be two separate systems, one for achieving pay equity and another for the next phase:

> Lack of integration of pay equity into regular compensation systems has been found in organizations that have issued a separate cheque for ongoing pay equity adjustments, thus implying they are not really a part of base pay. Also some employers have used a gender-neutral job evaluation system for pay equity purposes but not for ongoing compensation purposes. Only if pay equity principles are institutionalized into compensation systems can it be assured that the underlying principle of fairness is not lost.[4]

Organizational changes may require a new plan.

There will be situations where the changes in an organization are so profound that methods must be modified and a new plan may even have to be established. We will examine this possibility later on.

13.4 The Task Force recommends that the new federal pay equity legislation provide that the pay equity committee must use the same methods, tools and process as were used to develop the pay equity plan to ensure the maintenance of pay equity. If those methods and tools or that process are no longer effective in maintaining pay equity, they must be modified accordingly.

Pay equity committee members must master the tools needed to maintain pay equity.

In Ontario and Quebec, a problem has arisen in some cases when outside consultants were hired to handle the evaluation phase. In some instances, consultants copyright their evaluation tools and methods and do not provide these tools and methods to the employer or the pay equity committee. Consequently, when the maintenance phase begins, the persons in charge must again call on the consultant's services, which needlessly drives up costs. It is therefore very important to stress that, from the outset, those in charge of the pay equity plan must understand and have a firm grasp of the tools they will need later to comply with the obligation to maintain pay equity. When hiring an outside consultant, those in charge of pay equity at the organization must establish from the outset of the process that the consultant will allow them to use the method and tools on their own to maintain pay equity after it has been achieved.

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[4] Nan Weiner. (2002). "Effective Redress of Pay Inequities." *Canadian Public Policy – Analyse de Politiques*, Vol. 28, Supplement 1, p. S113.

> [TRANSLATION] The obligation to maintain pay equity is an integral part of pay equity implementation in an organization and this must be kept in mind from the outset of the implementation process when the evaluation method and tools are selected.
>
> Louise Boivin. (2002). *Implementing Pay Equity in Small-to-Medium-Sized Enterprises.* Unpublished research paper commissioned by the Pay Equity Task Force, p. 49.

Frequency

Pay equity adjustments must be reviewed in light of any changes that may occur in the organization.

Pay equity maintenance requires regular reviews.

> Pay equity reviews should be a "way of life" as one piece of the total compensation view. Regular reviews will ensure pay equity knowledge is maintained, pay treatment is accurate and employees will feel they are being treated fairly.
>
> Canadian Telecommunications Employees' Association (CTEA). Submission to the Pay Equity Task Force, June 2002, p. 6.

Requiring regular reviews does not mean the employer must check pay equity maintenance every week or every month, a situation that would quickly become hard to manage. However, it does imply that maintaining pay equity requires conducting reviews at a certain frequency.

> The CBA recommends that maintenance of pay equity under a new regulatory regime should be managed through a self audit process conducted on a regular basis by the employer.
>
> Canadian Bankers Association (CBA). Submission to the Pay Equity Task Force, November 2002, p. iii.

> This duty cannot be a one time obligation. Employers must be required to maintain pay equity by conducting periodic reviews of their pay equity plans and making any necessary adjustments.
>
> The Public Service Alliance of Canada (PSAC). Final submission to the Pay Equity Task Force, November 2002, p. 2.

Organizations should prepare a pay equity maintenance plan.

Ontario's Pay Equity Commission suggests that organizations prepare a pay equity maintenance plan.[5] In a survey on maintenance at 22 organizations in Ontario, Gail E. Lawrence stresses the relevance of the methodical approach some organizations have adopted to facilitate maintenance.

> Other controls and monitoring approaches mentioned by organizational respondents were an internal equity and formal salary administration program; a formal salary grid; and annual reviews of job descriptions to identify significant changes in job content.
>
> Gail E. Lawrence. (2003). *Models and Best Practices for Pay Equity Maintenance.* Unpublished research paper commissioned by the Pay Equity Task Force, p. 16.

Timeframes for maintenance should be stipulated.

The lack of timeframe in both the Quebec and Ontario laws creates greater uncertainty with regard to maintenance activities and may result in conflict between employee and employer representatives.

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[5] Ontario's Pay Equity Commission. *The Space Toy Co. Pay Equity Plan – Toronto.* Accessed on the Pay Equity Commission's website at http://www.gov.on.ca/lab/pec/peo/english/casestudy/jj_peplan.html.

> Respondents for both organizations and unions also pointed to the lack of time lines, deadlines, or penalties specific to requirements for regular or ongoing maintenance, making it difficult in some workplaces for one party to bring the other to the table on a timely basis to deal with maintenance issues as they arise. It was also pointed out that, through failure of one or both parties to conduct regular maintenance, it is often difficult to pinpoint when a change took place since the historical paper trail may be lacking or cloudy.
>
> Gail E. Lawrence. (2003). *Models and Best Practices for Pay Equity Maintenance.* Unpublished research paper commissioned by the Pay Equity Task Force, p. 17-18.

Three-year review period recommended.

Consequently, as with developing a pay equity plan, the legislation must provide clear requirements to avoid unnecessary challenges and delays. In the context of current job market changes, we suggest that a three-year period would be reasonable and this is what we are recommending in Chapter 15. Beyond three years, it may be more difficult to effectively identify and measure the impact of certain earlier changes. A shorter timeframe would require too much work for the pay equity committee in too little time.

Posting

Ontario: employers obligated to inform employees of changing circumstances.

In Ontario, employers are required to post information during the maintenance phase when the pay equity plan is no longer appropriate because of changing circumstances or changes to the organization's legal structure. However, the province's legislation does not stipulate the frequency of maintenance reviews and this has been criticized by a number of stakeholders. We believe that systematic maintenance reviews require regular posting of information even if no change has occurred. Employees will thus be assured that the employer has met its obligation to maintain pay equity and will know the results.

Posting of pay equity committee decisions.

Employees have a stake in the maintenance of the pay equity plan as they had in its inception. If the employees covered by a pay equity plan are to learn of the pay equity committee's decisions regarding maintenance, that information must be posted and made accessible to all employees. This is particularly important for non-unionized employees, who would otherwise have no sure way of knowing whether pay equity is being maintained. The posting must be complete, indicating the outcome of the analysis done by the pay equity committee and any alterations to the plan which result. The employees will be given eight weeks to make their comments, and the committee four weeks to respond. Employees who make comments but are dissatisfied with the committee's response can ask the proposed Canadian Pay Equity Commission to review the decision on the grounds suggested in Chapter 17.

Pay equity plans and maintenance postings must be sent to the proposed Canadian Pay Equity Commission.

As with the pay equity plan, postings concerning the maintenance process must be sent to the proposed Commission. The Pay Equity Task Force is convinced this measure is necessary to ensure that the obligation to maintain pay equity is respected and, in particular, to support the rights of non-unionized employees. This obligation involves no extra work for the organization since it consists simply of sending the content of the posting rather than drafting a new report.

Based on the postings received or on information that suggests an organization has failed to maintain pay equity, the proposed Commission can perform a sample audit. These audits are critical to protecting employees, especially non-unionized employees. The legislation should include monetary sanctions for failure to post or failure to send a copy of the posting within the prescribed timeframe.

13.5 The Task Force recommends that the new federal pay equity legislation provide that the employer must post the results of pay equity maintenance reviews and send a copy of the posting to the proposed Canadian Pay Equity Commission, described in Chapter 17, at least every three years.

Pay Equity Maintenance and Changes in Organizations

Organizational changes must be assessed for impact on pay equity.

Factors such as new technology, work reorganization or the diversification of products and markets may require changes to certain aspects of the pay equity plan or further salary adjustments. In some cases, these changes may affect job classes, gender predominance or value and thus, indirectly, wages. In other cases, these factors directly affect wages. If such changes are substantial, they will require intervention to ensure that the objective of pay equity maintenance is respected. However, because the effect on maintenance cannot be known in advance, it is essential that it be assessed.

Educational material required.

The following examples suggest a process that can be followed in various situations. The proposed Canadian Pay Equity Commission should create specific, detailed guides to address these types of issues in order to assist the persons in charge of pay equity in organizations. It should be noted that these examples are not intended to be exhaustive of the kinds of changes which may necessitate modifications to pay equity plans.

Creation of New Job Classes

Impact of reorganization, technological change and new skill requirements.

When changes such as reorganization, technological change and new skill requirements occur, new job classes may be created. In such a case, the committee must first establish gender predominance for that job class using the criteria which should be contained in any new pay equity legislation. Since there are not yet any incumbents, the most appropriate indicator for gender predominance will be that of stereotypes.

Then, based on the profile of requirements for that job, the job must be given a temporary value and wage level. For predominantly female job classes, the wage level will be deduced from the wage line of male comparators as described in Chapter 11. After six months or a year, the committee and the incumbents must reassess the job and its wages must be adjusted permanently.[6] These wages will then be consistent with pay equity and no other changes need be made to the plan.

Wage line for male comparators.

However, for predominantly male job classes where wages are set without reference to the job evaluation plan, the wage line for male comparators will have to be redrawn to include the new job. Wages for predominantly female job classes will then have to be adjusted accordingly. To avoid such changes, it would be preferable to assign wages to the new male comparator that reflect its value on the wage line.

Skill shortages.

The new predominantly male job class may require skills that are in short supply. In that case, the exception provided for in the statute applies and the supplement for the skills shortage is not included in the wage line. It is therefore possible to take into account the market and the effect of certain skills shortages. However, the pay equity committee will have to properly document the exception, as it would have when developing the plan.

If an individual wage valuation method was selected, which we recommend as an exception only, the new comparator could be used for a predominantly female job class.

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[6] Example adapted from Gordon DiGiacomo and Paul Carr. (2003). *International Nickel Company (INCO) Limited. A Case Study in Pay Equity Implementation.* Unpublished research paper commissioned by the Pay Equity Task Force.

Disappearance of a Job Class

Disappearance of a job class.

If a predominantly female job class disappears due to work reorganization or for other reasons, future wage comparisons may not be affected. However, if a male comparator disappears, the wage regression line will be affected because one of the points used to estimate the line has disappeared.

These changes will not necessarily have a drastic effect on pay equity results, for two reasons. First, if a single comparator disappears and there is a relatively high number of male comparators, the impact on the line likely will be minimal. Second, if the pay equity committee grouped predominantly female job classes on the basis of point intervals, the elimination of one predominantly male job class will probably have little effect.

Use of "ghost" jobs as male comparators.

When an individual wage comparison method is used, one option is to retain the comparator as a "ghost" job and to have it evolve in the same way as other male comparators in the plan.[7] In the long term, that option does not seem particularly viable. It would be better to identify another male comparator for inclusion in the plan.

Change in the Gender Predominance of Job Classes

One change that may affect the criteria for the pay equity plan is a change in the gender composition of a job class. This may occur because a job class has very few incumbents. Suppose, for example, that there are three incumbents—two men and one woman. If one man leaves and is replaced by a woman, the male majority obviously becomes a female majority. Is it necessary to change the gender predominance for that class?

Historical incumbency.

To answer that question, the pay equity committee must apply the same criteria it originally used to establish the plan. In this specific case, it may refer to historical incumbency as discussed in Chapter 9. If the job has been predominantly male for many years, the recent change will not result in a change in gender predominance. Consequently, the effect on wages will not have to be determined.

Importance of flexible criteria.

This example shows that flexible criteria contribute to the stability of pay equity plans. This is an important principle, since an apparent change in a single element of a plan should not automatically result in an adjustment of the plan results. Pay equity must be maintained in a manner that ensures the continuity and stability of results to the greatest extent possible, while respecting the legislation's primary objective.

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[7] This is one solution mentioned in documents of the Ontario Pay Equity Office. See note 5.

Changes in the Content of a Job Class

Changing responsibilities and maintenance.

Today, the content of some jobs is changing dramatically, through the broadening or enrichment of job duties, for example. Consider the case in which a predominantly female job class whose value has been determined already under a pay equity plan is assigned greater responsibilities, which also require more qualifications. How will pay equity be maintained in that case?

Re-evaluating the job class.

First, the pay equity committee must document these changes properly. The job class in question must then be re-evaluated using the same method and tools that were initially used to develop the pay equity plan. From a methodological point of view, it is easier to maintain pay equity in this case if an analytical job evaluation method is used such as the point-and-factor method. However, if an overall valuation method such as ranking was used, pay equity maintenance may be more complicated, since all jobs will again have to be ranked one against the other. That is why, as we mentioned earlier, it is important to keep maintenance in mind from the very outset of the pay equity process.

Once the new valuation is performed, the wages will be adjusted accordingly based on the wage line of the male comparators.

If a predominantly male job class is assigned greater responsibilities, the job class must first be re-evaluated, then the wage line redrawn.

Change in Pay

Changes in base pay, fringe benefits and flexible pay.

A change in pay may affect base pay, fringe benefits or flexible pay. The problem in terms of pay equity maintenance arises when any of these three components change for a male comparator. Particular attention must be paid to variations in the components of total compensation, since research has shown that, on average, women have not had equal access to fringe benefits as discussed in Chapter 11. The employer is obligated to ensure that these changes do not recreate wage inequities.

Changing pay packages and wage gaps.

If the wages for a predominantly male job class are changed, the pay equity committee must redraw the wage regression line and, where applicable, the employer must make adjustments for any new wage gaps with respect to predominantly female job classes. If an employer introduces new forms of pay for predominantly male job classes or gives some of them more generous fringe benefits, the committee must also assess their impact.

To this end, the pay equity committee must also apply the same criteria as those used to establish the plan. It must, in particular, verify if the new forms of pay are also available to predominantly female job classes. If so, no new salary adjustments need be made. If not, the employer may choose to extend the new form of pay or that benefit to predominantly female job classes or assign a dollar value and readjust the wages of predominantly female job classes accordingly.

Valuation method on an individual basis.

When a valuation method on an individual basis is used, the male comparator's wage increase will result in a corresponding increase in the wage of the predominantly female job class that was compared to it.

Renewal of Collective Agreements

Renewal of collective agreements.

The pay equity effects of wage increases resulting from the renewal of collective agreements is a complex issue that gives rise to differing views.[8] When an organization has a single plan, unionized and non-unionized employees can be grouped together, and unionized employees may be affiliated with different bargaining units. The wage line for male comparators would then include jobs in all bargaining units as well as non-unionized jobs. Note that the same problem arises when only predominantly female job classes are found in a single plan and these must be compared with all the predominantly male job classes in the organization. Both cases involve the complex issue of comparisons between bargaining units or between unionized and non-unionized employees.

> Spokespersons for organizations indicated that the presence of bargaining units can make maintenance more difficult where there are cross-group comparisons between non-unionized and unionized job classes.
>
> Gail E. Lawrence. (2003). *Models and Best Practices for Pay Equity Maintenance.* Unpublished research paper commissioned by the Pay Equity Task Force, p. 19.

Negotiated wage increases may create wage gaps.

To use a specific example, suppose that when one of the collective agreements is renewed, one union in the plan obtains wage increases for all the jobs it represents. The pay equity committee will then have to recalculate the wage line to include the new wages of the male comparators. New wage gaps may then be created with respect to predominantly female job classes in other bargaining units, whose collective agreement has not yet been renewed, as well as with respect to non-unionized predominantly female job classes.[9] In the context of pay equity maintenance, the employer will then be obligated to eliminate these new wage gaps so that the predominantly female job classes are on the new wage line.

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[8] See France Saint-Laurent, (2002), *Research into the Obligation to Maintain Pay Equity.* Unpublished research paper commissioned by the Pay Equity Task Force, and Anne Forrest, (2003), *After the Pay Equity Award: Can Collective Bargaining Maintain Equal Pay for Work of Equal Value?* Unpublished research paper commissioned by the Pay Equity Task Force.

Stakeholders concerned about ripple effects and wage spirals.

Some stakeholders have argued that such a process would have two undesirable results. An inflationary spiral effect on wages could result in the organization, since wage increases negotiated by one union would have a ripple effect on all wages in the organization. In addition, the various unions would be unable to exercise their power to bargain freely. Unions would be unable to benefit from their respective power relationships with the employer, a relationship that leads to different wage increases from one union to the next. In fact, in such a case the employer would have no other choice but to give the same wage increases to all employees, unionized or not.

Pay equity maintenance does not create spirals or artificial wage increases.

It is important to put these analyses and discussions into perspective. First, pay equity maintenance does not create inflationary spirals, nor does it automatically lead to automatic and artificial wage increases. Rather, it aims to prevent the exercise of bargaining power—one source of systemic discrimination—from cancelling the results of the pay equity plan. Historically, unequal bargaining power has always played against female workers in wage determination. The weaker bargaining power of predominantly female bargaining units and of non-unionized female workers has reinforced the role of stereotypes and prejudices. This has led to a devaluation of women's work and to lower relative pay (see Chapter 1). Reintroducing the influence of power relationships in collective bargaining may result in new discriminatory wage gaps.

With respect to the ripple effect of collective agreements on salaries, it should be noted that it already exists in organizations regardless of pay equity maintenance. Today it is rather rare[10] for bargaining units in a given organization to obtain very different wage increases. Where wages are concerned, differential bargaining by different unions is carried out within strictly defined boundaries. However, due to marked changes in the workplace, the negotiation of a collective agreement increasingly involves a wide range of non-wage elements such as the organization of work and technological change which may vary significantly from one union to another in the same organization. So, although maintenance of pay equity may theoretically limit free negotiation of wages to a certain extent, it must be recognized that, in practice, this argument has a much narrower scope in contemporary labour relations.

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[9] This will not raise the line to the same degree since only some of the points used to draw the line are changed. The wage increase for predominantly female job classes will thus generally be lower than the increase obtained in the new collective agreement.

[10] Unless there is a shortage of certain types of skills.

Bargaining strength.

One way in which to address the play of the power relationship during pay equity maintenance is to consider it an exception to the principle of pay equity. Only Ontario's proactive legislation considers that bargaining strength can justify the reappearance of wage gaps between predominantly female job classes and predominantly male job classes of the same value. Subsection 8.(2) of Ontario's *Pay Equity Act* stipulates that:

> 8.(2) After pay equity has been achieved in an establishment, this Act does not apply so as to prevent differences in compensation between a female job class and a male job class if the employer is able to show that the difference is the result of differences in bargaining strength.[11]

Bargaining strength should not be an exception.

This provision has been the object of much criticism because it can result in the recreation of wage discrimination. Chapter 12 addresses the types of exceptions we believe to be justified in pay equity. The members of the Task Force do not recommend that bargaining power be an exception to the maintenance of pay equity. Pay equity is a fundamental right which must not be compromised to maintain the status quo with respect to labour relations. Systemic wage discrimination must be eliminated and it would be incoherent, in our view, to reintroduce it through labour relations.

Sale or Disposition of the Organization in Whole or in Part

Successorship rights.

This topic covers various situations such as the sale or assignment of an entire organization and the sale or assignment of part of an organization's operations or part of an establishment. In all cases, all or some of the employees in the organization come under the authority of another employer. In these cases the legislation should impose a continuing obligation, as do the laws of Ontario and Quebec, which means in particular that the new employer must maintain pay equity for all employees.

The sale or disposition of all or part of an enterprise, or the merger of the operations of two or more employers, may have implications for the maintenance of pay equity. In these circumstances, some or all of the employees will come under the authority of a new employer.

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[11] Ontario. *Pay Equity Act*. R.S.O. 1990 c. P.7.

Changes in corporate structure.

However, such changes in the corporate structure may lead to substantial changes in the parameters of the pay equity plan. For example, it may be possible that the original job evaluation method can no longer be viewed as neutral. In this case, a new pay equity plan would have to be developed. Until the new plan is developed, however, the wages under the previous pay equity plan or plans must continue to be paid. This is in accordance with the pay equity principle which states that, once pay equity has been achieved, it cannot be suspended.

13.6 **The Task Force recommends that the new federal pay equity legislation provide that when an organization is sold or disposed of in whole or in part, the new employer is bound by the obligations of the pay equity plan established by the previous employer.**

13.7 **The Task Force recommends that the new federal pay equity legislation provide that if the pay equity plan no longer complies with the legislation, the employer must modify the plan in accordance with the provisions governing the development of a pay equity plan, including those governing the pay equity committee.**

Payment of Adjustments in the Context of Pay Equity Maintenance

Once pay equity has been established, we are recommending that the payment of adjustments be spread over a certain period as discussed in Chapter 15. Proactive pay equity legislation typically allows adjustments to be paid in instalments to avoid imposing a financial burden that may be too heavy in some cases for employers to settle in a single payment.

Delaying wage adjustments violates a fundamental right.

However, in maintenance situations, adjustments will likely apply only to a few jobs and there is no reason to spread out the payments. It must be understood that, in fact, payment in instalments represents a cost to employees in predominantly female jobs in that it delays their access to a fundamental right. Adjustments for maintenance purposes must be calculated from the date at which the change in the organization occurred—for example, when new responsibilities were added to the duties of a predominantly female job class. If the pay equity committee calculates these adjustments a year later, the amounts must be retroactive with interest. This reflects the principle that pay equity is an ongoing obligation and that an employer cannot decide to suspend pay equity for one or two years, and then reintroduce it.

13.8 The Task Force recommends that the new federal pay equity legislation provide that payment of salary adjustments for maintenance purposes are owed as from the date at which the change occurred and cannot be spread out. Employers that fail to comply with this obligation will be liable to fines.

Pay Equity and Internal Equity

Pay equity and internal equity.

According to a number of experts, once pay equity is achieved, internal equity must be achieved among all the jobs in an organization, regardless of gender predominance, a process that would in effect considerably facilitate pay equity maintenance:

> The best way to ensure that pay equity is maintained where it has been achieved, is to make it compatible with the organization's compensation structure, so that maintenance is ongoing. This is best accomplished by putting female and male jobs into the same salary structure, and then monitoring the re-classification system to ensure that male jobs are not creeping up into higher salary grades while women's jobs are not.[12]

All jobs should be paid based on their relative value in evaluation plan.

If, in fact, all job categories are remunerated on the basis of their relative value in the evaluation plan, the impact of any change could be measured more effectively and integrated in the pay system. The employer will be responsible for ensuring that any changes subsequent to achieving internal equity would not have a discriminatory effect on predominantly female job classes. One way to verify this is to trace the regression line for predominantly male job classes and to ensure that no predominantly female job class falls under that line.

Internal equity must always be implemented after pay equity.

It is important to note that internal equity must not be implemented at the same time as pay equity, but must follow it. Achieving pay equity requires specific, ongoing vigilance to eliminate gender bias with respect to predominantly female job classes. Implementing pay equity and internal equity at the same time may detract from the objective by displacing attention to other issues.

To ensure that pay equity is maintained, internal equity must be achieved using the same tools, methods and process.

Achievement of internal equity should not be required by human rights legislation.

Some pay equity stakeholders with whom we consulted expressed the view that new pay equity legislation should impose an obligation to achieve internal equity once a pay equity plan has been implemented, arguing that this would assist with the maintenance of pay equity. In our view, the achievement of internal equity is a matter of good human resource management practice, rather than a human rights principle in itself. We do not therefore recommend that such a provision should be included in pay equity legislation.

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[12] Nan Weiner, *supra*, note 4, p. S113.

Conclusion

Maintenance is an evolving area.

In this chapter, we laid down the principles that must govern the maintenance of pay equity from the perspective of ensuring continuity with the original pay equity plan. Economic development should not partly cancel the gains of female workers in predominantly female job classes or the efforts of stakeholders to achieve that objective. Pay equity maintenance is a subject that continues to evolve, and specific applications of the pay equity principles we have set out may change over time as a result of unforeseen events. The recommendations in this chapter form a flexible framework that can be adapted to a range of circumstances in changing workplaces.

Chapter 14 – Enforcement

Voluntary compliance inadequate.

Clear enforcement measures needed.

In this chapter, we will consider the enforcement measures, remedies and sanctions which are necessary to support pay equity legislation. Our starting point in this respect is the proposition that equity in the workplace is not achievable through exclusive reliance on the voluntary efforts of employers. This means that a legislative scheme aimed at eliminating wage discrimination requires clear enforcement measures backed up by the coercive power available to government.

Current legislative framework has not been effective.

As we pointed out earlier, section 11 of the *Canadian Human Rights Act* (CHRA)[1], has, for over 25 years, placed an explicit legal obligation on employers to eliminate wage discrimination against women. Other sections of the Act contain general prohibitions against discrimination on a number of grounds. In addition, the goal of equality has been a value of pre-eminent constitutional status under the Canadian Charter since the early 1980s. These provisions, on their own, have failed to induce the majority of employers to examine and remove sources of discrimination in their workplaces.

Absence of clear standards a problem.

This may be due in part to the absence of clear standards in the legislation. There is little evidence, however, that a regime which depends entirely on positive steps being taken on a voluntary basis will be effective in eliminating discriminatory wage patterns for workers under federal jurisdiction.

In the context of employment equity, the Royal Commission on Equality in Employment reached the following conclusion:[2]

> It is difficult to see how a voluntary approach, that is, an approach that does not include an effective enforcement component, will substantially improve employment opportunities for women, native people, disabled persons or visible minorities. Given the seriousness and apparent intractability of employment discrimination, it is unrealistic and somewhat ingenuous to rely on there to be sufficient public goodwill to fuel a voluntary program.

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[1] Canada. *Canadian Human Rights Act.* R.S.C. 1985, c. H-6.

[2] Judge Rosalie Silberman Abella. (1984). *Equality in Employment: A Royal Commission Report.* Ottawa: Department of Supply and Services, p. 197.

"Fairness" must be achieved through legislation.

Educational materials circulated by the Public Service Commission of Canada make the same point:

> As Abella (1984) has pointed out, "it is not fair that many people in these groups have restricted opportunities, limited access to decision-making processes that critically affect them, little public visibility as contributing Canadians, and a circumscribed range of options generally. It may be understandable given history, culture, economics and even human nature, but by no standard is it fair." [...] Unfortunately experience suggests that the disadvantage experienced by equity group members has not been eliminated through voluntary measures. Consequently, it appears that "fairness" must be achieved through legislation.[3]

Voluntary UK *Code of Practice* ineffective.

An Equal Pay Task Force which reported to the Equal Opportunities Commission in the United Kingdom in 2001 concluded that, despite the guidance contained in a voluntary *Code of Practice* produced several years earlier, large numbers of employers had resisted examining their compensation structures to determine whether they were free of discrimination:

> Our evidence suggests that the vast majority of employers do not believe that they have a gender pay gap and therefore do not believe an equal pay review is necessary. We are firmly of the view that there will be little or no progress in closing the pay gap unless employers take the essential first step of examining whether they have inequalities in their pay schemes. However, the overwhelming evidence to date is that most will not do so voluntarily.[4]

The Task Force went on to recommend that such reviews should be made mandatory.

Positive obligations plus enforcement measures are effective.

On the other hand, there is evidence that the chances for progress towards equality are increased when a legislative regime is put in place which includes positive obligations backed up by enforcement measures. In a report reviewing the impact of the affirmative action regime in the United States, the authors referred to a number of academic studies showing that affirmative action under a federal contractors program had led to an increase in minority employment in those firms covered by the program; the report also concluded that the earnings of black workers had increased steadily, in part because of affirmative action programs in the American educational system.[5] Another review of studies concerning the effectiveness of the affirmative action regime concluded that, despite the different methodological approaches of a number of studies, they all demonstrated that affirmative action had brought about a modest but significant gain in wages and employment for women and persons of colour in a range of occupations.[6] An introduction to this review concluded:

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[3] Public Service Commission of Canada (PSC). Unit 3 of *Employment Equity Career Counselling Study Guide.* Available on-line at http://www.psc-cfp.gc.ca/centres/employment_equity/eecco/unit3_e.htm.

[4] Equal Pay Task Force. (2001). *Just Pay: A Report to the Equal Opportunities Commission.* Manchester: Equal Opportunities Commission, p. xi.

> The review of the evidence would lead one to conclude that while affirmative action can be an effective policy tool, its impact is related to the vigor with which it is enforced.[7]

British Columbia supports voluntary approach.

There is still support in some quarters for a voluntary approach. The British Columbia Task Force on Pay Equity which undertook an independent review of pay equity in British Columbia concluded in its report that, in moving towards the goal of equal pay for work of equal value, the emphasis should be on inculcating among employers a willingness to take the necessary steps without statutory coercion.[8]

Importance of changing social attitudes.

In other parts of our report, we, too, have stressed the importance of changing social attitudes towards issues of discrimination, and bringing about a willingness to work towards its elimination by educational and persuasive means. In our view, no legislative regime can have a hope of ultimate success if resources are not devoted to informing the people affected of their obligations and entitlements, to offering them assistance in meeting those statutory requirements and to giving them fair opportunities to rise to the challenge. We have expressed our belief that investing resources at the front end to assist people in understanding what their obligations are and how to comply with them, would be repaid many times over in terms of more general conformity with pay equity principles.

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[5] Affirmative Action Review. (1995). *Report to the President.* July 1995.

[6] M.V. Lee Badgett and Heidi I. Hartmann. (1995). "The Effectiveness of Equal Employment Opportunity Policies." In Margaret C. Simms (Ed.), *Economic Perspectives on Affirmative Action.* Washington, D.C.: Joint Centre for Political and Economic Studies.

[7] Margaret C. Simms, Introduction, in ibid.

[8] Nitya Iyer. (2002). *Working Through the Wage Gap: Report of the Task Force on Pay Equity.* B.C. Ministry of Attorney General.

In 25 years, the CHRA has not produced desired results using voluntary approach.

Nonetheless, we cannot agree with the British Columbia Task Force that a regime based on voluntary compliance is adequate to assure effective progress towards pay equity. For more than a quarter of a century, the Canadian Human Rights Commission has worked vigorously to educate the public, and to provide specialized information to people who have rights or responsibilities under the *Canadian Human Rights Act*. Yet, even combined with the prospect of litigation, these efforts have not been entirely successful in achieving the goal of pay equity for all federally-regulated workplaces.

No statistics available to judge compliance under CHRA.

It is naturally difficult to gauge the degree to which these efforts have been successful in improving the position of working women under federal jurisdiction. One writer has pointed out the difficulties of making such an assessment in the case of a complaint-based system:

> For the federally regulated organizations subject to the complaint-based model of pay equity under the Canadian Human Rights Act, there were, not surprisingly, no statistics identified on the number of organizations that had no discriminatory pay practices and had achieved pay equity. This is a rather serious problem in that there is no way of validly measuring compliance under this model.
>
> Judith Davidson-Palmer. (2002). *Assessing Pay Equity Implementation, Monitoring and Enforcement Models.* Unpublished research paper commissioned by the Pay Equity Task Force, p. 14.

CHRC has handled some 400 complaints.

HRDC has monitored some 1,400 employers and audited 53.

Many employers have not responded to current legislation.

We have seen, however, that the Canadian Human Rights Commission has handled approximately 400 complaints, many of which were not eligible for consideration, as they did not raise pay equity issues. The Equal Pay Program at HRDC has conducted monitoring visits to approximately 1400 employers, and of these, they have completed audits of 53 employers under the audit criteria they developed in 1993. In a handful of cases, the staff of the Equal Pay Program has referred a complaint to the Canadian Human Rights Commission. Unless one assumes that all of the remaining employers are in compliance, it would appear that there are still many workplaces in the federal jurisdiction which have not been touched in any way by the current regime.

Employers need the right pay equity tools.

It is important that employers be given the tools to permit them to fulfill their obligations under the statute, and it is to be hoped that they will be persuaded that equity is a worthwhile goal. It is our view, however, that exhortations to right conduct must be augmented by a range of remedial options and sanctions. These can be used to apply additional pressure on those who do not comply willingly or in a timely fashion, to provide consistency and certainty in the criteria with respect to what constitutes compliance with the legislation, and to ensure the security of employees who wish to pursue their rights.

Diverse remedies and enforcement options must be available.

We are not suggesting that it will be necessary to use stringent or punitive sanctions as the primary means of enforcement. Rather, we are suggesting that the legislation make provision for a range of remedies and enforcement measures, many of them ameliorative in nature. The options must be diverse enough to address different kinds of conduct, and different stages in the pay equity process. The behaviour of an employer who wilfully refuses to comply with legislation and that of an employer who is uncertain of what the statute requires may be addressed through different kinds of sanctions. It is necessary to make it clear to all employers, however, that it is their responsibility to acquire the skills and knowledge required to carry out their obligations, and that there will be consequences for failure to do this.

Oversight agencies should have the power to develop innovative remedies not in legislation.

We think it is necessary to make provision in the statute for a broad range of sanctions and remedies. In this context, we are recommending that power be conferred on the oversight agencies to fashion innovative remedies as well as to deploy those mentioned specifically in the legislation. It should be clear, for example, that the oversight agencies can make interim dispositions of issues pending a final outcome, that they can accord standing in the process to community organizations or other parties, and that they have control over their own procedures.

In Chapter 17, we will be setting out a plan for the administrative oversight of new pay equity legislation. Several of the agencies we describe will have a role in the enforcement of the legislation.

Canadian Pay Equity Commission

The agency which we have called the Canadian Pay Equity Commission would play a role which emphasizes the provision of information and assistance to employers, employees and employee representatives so that they can formulate pay equity plans which will bring them into compliance with the legislation. We do not believe that this orientation to promote, educate and provide technical assistance is inconsistent with the possession of the authority to make directions which are binding on the participants, and which are backed up by access to the more coercive authority of other bodies. Neither do we think it incompatible with the power to conduct audits and investigations.

Capacity for remedies and sanctions is necessary.

We are outlining here how we think responsibility for enforcement measures ought to be allocated among oversight bodies. We would observe, however, that capacity for these remedies and sanctions is necessary, whatever administrative structure is ultimately put in place.

i) Complaints

Capacity to handle complaints.

Though proactive legislation seeks to ensure that all employers undertake a systematic process to eliminate wage discrimination, it is necessary to provide clear recourse in the event that an employer fails to comply with the legislation, or if a dispute arises over some aspect of the pay equity process. The legislation therefore must make it clear that complaints can be brought to the Commission by employees, employee representatives or an employer. The Commission may then assess the complaint to determine whether it refers to a matter which properly falls within the scope of the legislation, and whether it should be investigated or disposed of in some other fashion.

ii) Compliance Orders

Capacity to issue compliance orders.

Under section 24 of Ontario's *Pay Equity Act*, the review officers of the Pay Equity Commission have the power to issue compliance orders:

> 24. (1) Where a review officer is of the opinion that a pay equity plan is not being prepared as required by Part II or Part III.1, the review officer may order the employer and the bargaining agent, if any, to take such steps as are set out in the order to prepare the plan.
>
> [...]
>
> (3) If a review officer is of the opinion that there has been a contravention of this Act by an employer, employee or bargaining agent, the officer may order the employer, employee or bargaining agent to take such steps to comply with the Act as are set out in the order.

The orders made by review officers may in some cases embody the strategies for achieving pay equity which the parties have agreed on, or they may represent a determination by the officer of what steps must be taken by the parties to bring them into conformity with the Act.

The orders made by review officers may be appealed to the Pay Equity Hearings Tribunal by the parties.

Section 103 of the Quebec legislation includes the following clause:

> 103. If a settlement is reached between the parties, it shall be evidenced in writing.
>
> If no settlement is possible, the Commission shall determine the measures to be taken so that pay equity may be achieved in accordance with this Act as well as the time allotted for their implementation.

Commission can decide on analysis approach to be used in disputes.

We think it would be valuable to endow the Commission with the authority to make orders which determine the approach to pay equity analysis when the parties are unable to reach agreement, or which identify violations of the statute. The following are examples of the kinds of orders which might be used by the Commission to assist in the achievement of pay equity:

Types of orders.

- orders which clarify or determine interpretive or technical issues which are preventing the parties from reaching agreement on a strategy for implementing pay equity;
- orders requiring the parties to participate in some form of dispute resolution or relationship building;
- orders requiring the parties to provide information for use in the process;
- orders requiring that employees be provided with information through posting or other publication;
- orders requiring participants to take certain kinds of training;
- orders requiring an employer, employee or bargaining agent to take steps to rectify a violation of statutory requirements; and
- orders declaring a job class to be male or female.

iii) Investigations

New Commission should have investigative power.

We have suggested that the emphasis in implementing the legislation be on encouraging collaboration by the parties in analysing their own workplaces and deciding what needs to be done to ensure pay equity. In this context, the parties would be encouraged to share the information necessary to this process.

In instances where it is not possible to create this co-operative environment, an oversight agency should have the power to obtain the information necessary to ensure compliance with the legislation. This should include the power to order the production of documents, and to require persons with particular information to share that information. An example of a description of these kinds of powers is found in sections 34 and 35 of Ontario's *Pay Equity Act*, which provide that review officers may

- enter premises;
- request the production of documents "or things that may be relevant to the carrying out of the duties";
- remove documents or other things to be copied;
- question persons on relevant matters; and
- obtain a search warrant to enable them to carry out their duties under the Act.

To enable review officers to carry out these functions, there is provision that they can obtain a search warrant.

iv) Reporting

One adjunct to a number of regulatory regimes is a reporting requirement, which places an obligation on those who are required to comply with legislation to provide systematic information on the steps they are taking to do this. This is one of the requirements of the federal *Employment Equity Act*, and the information provided is the basis for the annual reports to Parliament on the effectiveness of this statute at meeting policy objectives.

Quebec's *Pay Equity Act* – reporting requirements.

Section 95 of Quebec's *Pay Equity Act* reads in part as follows:

> 95. The Commission may, after expiry of the applicable time limit fixed in any of sections 37 to 39, require of an employer that he send to the Commission within the time it fixes
>
> (1) a report describing the measures he has taken in order to achieve or, as the case may be, maintain pay equity;
>
> (2) any relevant document or information.

This section permits the Commission de l'équité salariale [Quebec pay equity commission] to put in place a requirement to report on the achievement or maintenance of pay equity.

Stakeholders reticent about regular reporting: needs clear justification.

In our consultation process, we encountered mixed views about this kind of systematic reporting requirement. Staff involved in the administration of some pay equity legislation expressed the view that reports of this kind did not justify the efforts which would have to be made by employers to complete them, and agency staff to collect and organize them, unless the information would be used for some clear purpose.

Reporting provides regular reminders.

We are of the view that some kind of systematic reporting requirement does serve a useful purpose as part of a menu of enforcement measures. It provides a regular reminder to employers that they do have obligations to achieve and maintain pay equity, and ensures that they will have to give some account of their progress in this respect. Thought should be given to ways of making this a manageable requirement for employers; these could include provision for electronic filing, standard reporting forms and staff assistance. At some stages, such as the period when a pay equity plan is being formulated, or during the maintenance reviews, the requirement could be met by submitting the documentation the employer is required to post in the workplace. We have referred to this kind of reporting in our description of the elements of the pay equity plan in Chapter 7.

UK: Inclusion of pay equity reports in annual reports (voluntary measure).

In the United Kingdom, the *Code of Practice on Equal Pay* formulated by the Equal Opportunities Commission[9] suggests that information about progress towards pay equity be included as part of the annual reports of corporations and public sector organizations. Although, contrary to the recommendations of the Equal Pay Task Force,[10] the provisions of the Code were not made mandatory, this is an example of how a reporting requirement might be tied into the assembly of information by employers for other purposes.

France: Annual "social reports."

In France, employers are required to provide annual "social reports" which report on their compliance with a range of social legislation.[11] Such a comprehensive approach would have two advantages:

- It would permit employers to satisfy one set of reporting criteria, rather than having to provide a number of different reports under different pieces of legislation. Since, for example, employers are already required to submit reports under the *Employment Equity Act,* it would be desirable to find some way of harmonizing these reporting requirements to avoid duplication of effort.
- It would permit analysis of the links between different legislative enactments which have related objectives.

Cumulative information from reports can contribute to identification of statutory weaknesses.

A requirement that reports be submitted on a regular basis also assists with the creation of a base of information which can be used to monitor the operation of the legislation. Without the information provided by a regular reporting system of some kind, it is difficult to assess the overall success of legislation, or to identify aspects of the legislation which are problematic.

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[9] Equal Opportunities Commission (EOC). (1997). *Code of Practice on Equal Pay.* Manchester: EOC.

[10] Equal Pay Task Force, *supra,* note 4, p. xv.

[11] Ariane Tennant. (2002). *Pay Equity in Europe: A Comparative Study of European Union and Selected National Approaches.* Unpublished research paper commissioned by the Pay Equity Task Force.

> The audit approach clearly identifies the various elements that may contribute to pay inequities. If an external body is using an audit approach to assess compliance and conducts such audits in a universal manner, it ensures that all organizations are treated equally and judged by the same criteria.
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> Judith Davidson-Palmer. (2002). *Assessing Pay Equity Implementation, Monitoring and Enforcement Models.* Unpublished research paper commissioned by the Pay Equity Task Force, p. 11.

v) Audits

Self-audits (voluntary measure).

Audit exercises are a common way of monitoring compliance with legislation. One possible version of this is to articulate in the legislation the expectation of a self-audit process. This is essentially the approach which has been adopted in the United Kingdom, where the *Code of Practice on Equal Pay* is intended to serve as a guide for employers as they assess their own pay practices.

Regular reviews enable employers to monitor progress.

We agree that systematic self-assessment is a vital aspect of the enforcement of any pay equity legislation. By taking a clear-eyed look at their pay practices and applying clear criteria in this process, employers are in a better position to decide what steps they must take to fulfill their statutory obligations. By doing it at regular intervals, they are able to evaluate the progress they have made, and to determine what remains to be done.

We are not convinced, however, that exclusive reliance on a self-auditing process is sufficient. We believe that a comprehensive and flexible enforcement package should include some means for considering the performance of individual employers in relation to others, and of bringing an objective perspective to bear on assessing an employer's compliance with statutory norms.

Oversight agency should have audit function.

We thus believe that a third party—an oversight agency of some kind—has a role to play in the audit process. By reviewing the performance of organizations according to a common set of criteria, an oversight agency would be able to assess the degree to which legislation is being observed, identify process or interpretive problems with the legislation, and discover whether the incidence of compliance varies from one sector to another. This auditing system can be particularly useful as a way of monitoring continued compliance and maintenance of pay equity after the initial pay equity plan has been implemented.

Follow-up audits encourage compliance.

As we have seen, the Canadian Human Rights Commission has established an audit system in relation to the *Employment Equity Act.* The information provided in the annual report for the

2001-2002 fiscal year[12] indicated that an initial audit of 235 of the 412 employers covered by the Act showed a compliance rate[13] of only 3 percent, but that the rate had risen to 19 percent on the basis of the audits done up until March 31, 2002. The projection for the end of the following fiscal year was that there would be a compliance rate of 29 percent. Though it is, of course, difficult to assess the direct impact of the audit system itself on the rate of compliance, it seems likely that it is a contributing factor. In support of this, the Commission noted a slightly higher rate of compliance among those employers who had been the subject of a follow-up audit by the Employment Equity Branch.

Audit systems.

Comprehensive audits.

Random audits.

There are many ways in which an audit can be conducted. For example, the Employment Equity Branch of the Canadian Human Rights Commission intends to eventually audit every employer who is covered by the legislation, in order to provide a comprehensive picture of the degree of compliance. The Ontario Pay Equity Commission, which administers legislation covering a very large number of employers, initiated an audit process which randomly selected a sample of employers; when the process revealed a particularly high degree of non-compliance in a particular sector, that sector was subjected to a more intensive audit process.

Audit developed from self-audits.

Another possibility is that the audit done by an oversight agency would build on the information reported by employers, and on the results of the self-auditing process. In this model, an audit would be triggered by failure to report, or by shortcomings or suspect conclusions in the report. In their submission to the Pay Equity Task Force, the Canadian Bankers Association made the following suggestion:

> Audits should only be conducted when an employer has introduced pay equity for the first time, when a routine inspection discloses that bias exists in an employer's compensation system or when an employer fails to conduct a self audit in a timely way. Employer self audits, conducted according to agreed upon criteria, could act as the maintenance tool for employers who have achieved pay equity. Self audits could provide a framework for assessing their compensation policies and procedures on an ongoing basis for purposes of pay equity.
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> Canadian Bankers Association (CBA). (2002). Submission to the Pay Equity Task Force, November 2002, p. 4.

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[12] Canadian Human Rights Commission. *Performance Report – For the Period ending March 31, 2002.*

[13] It should be noted that the test for compliance in these audits is the absence of discriminatory employment barriers, not achievement of proportionate representation of disadvantaged groups in the workforce.

Audit system depends on resources available.

The specific method of conducting audits would depend on the resources which the oversight agency could devote to them, and on practical considerations of information gathering and compilation. Whatever format is used, or whatever sampling techniques are chosen, it is important that the criteria and objectives for the audit be clearly formulated and communicated. It is only in this way that an audit can provide credible information on which to base assessments of the effectiveness of the legislation.

14.1 The Task Force recommends that the new federal pay equity legislation provide that the proposed Canadian Pay Equity Commission, described in Chapter 17, be given the power to:

- **receive complaints from employees, employee representatives or employers alleging infractions of the legislation;**
- **issue compliance orders aimed at supporting the achievement of pay equity;**
- **investigate complaints, supported by any necessary power to summon documents or other information and to enter premises; and**
- **conduct systematic audits of compliance with the pay equity legislation.**

Canadian Pay Equity Hearings Tribunal

Tribunal should have a full range of remedial powers and sanctions.

We think it is important that the adjudicative body associated with pay equity legislation have access to a full range of remedial powers and sanctions, in order to deal with all of the eventualities which may arise in administering the legislation. This body will, as we intend it, have adequate expertise and credibility to justify granting it broad and flexible remedial authority. In this respect, we would suggest that the statutory language used to describe this remedial authority should not unnecessarily foreclose innovative remedial options developed by the tribunal itself in response to a changing environment. This flexibility will allow the tribunal the greatest scope to formulate remedies which will optimally serve the participants in the system.

i) Ameliorative Remedies

Remedial options should be accommodating and flexible.

In keeping with the ameliorative purposes of the statute, this remedial authority should be exercised in a way which will assist employers and their employees to find a way to comply with the statute which will reflect their particular circumstances, and will give the legislation optimal effect for them. It is difficult to specify precisely what all these remedies might be.

Decisions should promote and preserve long-term relationships.

The parallel of labour tribunals is an instructive one. Labour relations boards and arbitrators, charged with arriving at decisions which not only address immediate issues but also promote and preserve vigorous long-term relationships, have used their remedial authority in innovative ways to support these goals. They have formulated principles for the award of interim relief, issued instructions for the circulation of information considered necessary to reassure employees or to correct misapprehensions and, in extreme cases, spelled out the terms on which the relationship will continue.

Without being able to draw up an exhaustive list of what the general remedial powers of a tribunal might be, we can say that the following should be included:

- The power to provide authoritative interpretations of the statute, accompanying regulations, and any rules, guidelines or policies formulated by the Commission or by the Tribunal itself.
- The power to specify steps which should be taken to achieve compliance with the statute, including the selection of acceptable job evaluation or wage adjustment methodologies.
- The power to determine what constitutes the appropriate pay equity unit.
- The power to determine whether methods of job evaluation and comparison or wage adjustment meet the appropriate standard of gender inclusiveness.
- The power to determine whether resources or advice proposed for use by the parties will permit them to meet the standards required to comply with the statute.
- The power to direct that the parties participate in dispute resolution or relationship-building processes.
- The power to require that information be produced, posted or published, in order to permit the parties to participate effectively in the process, or to inform employees.
- The power to utilize experts, consultants, or dispute resolution professionals to assist in making the necessary determinations.
- The power to make directions with respect to the amount of the wage adjustments and the period of retroactivity to which they will apply.

This list should include the power to enforce determinations or orders made by review officers of the Pay Equity Commission, and to consider any issues which are referred by the Commission for interpretation or adjudication.

We do not think the regime we suggest is based on the premise that all employers are seeking ways to avoid complying with the statute, or that they are incapable of pursuing the achievement of pay equity for their employees with only minimal assistance from third parties. We have, however, suggested a legislative regime which places the onus on employers to demonstrate that their wage patterns do not discriminate against women and it is, in our view, useful to provide an oversight agency with remedial powers which will support the efforts being made by employers to reach the goal set out in the legislation.

14.2 The Task Force recommends that the new federal pay equity legislation provide that the proposed Canadian Pay Equity Hearings Tribunal, described in Chapter 17, be given authority to formulate a broad range of remedial measures aimed at assisting and directing employers and employee representatives to achieve compliance with the statute.

ii) Sanctions

Though we believe the emphasis in enforcing the statute should be on providing the parties with the information and the skills they need to follow the path to compliance, we also acknowledge that, as with any statutory regime, it is necessary to contemplate the possibility that not all employers or employees will comply with the legislation.

Tribunal must have authority to impose sanctions.

We have therefore concluded that it is necessary to provide authority to the Canadian Pay Equity Hearings Tribunal to impose sanctions for recalcitrance or misconduct on the part of employers, employees or employee organizations.

Key issue: protecting employees from intimidation or coercion.

There is one issue for which this is crucially important, and that is the matter of protecting employees from intimidation or coercion as they exercise rights or carry out responsibilities under the legislation. The employees for whom the statute is meant to provide relief are inherently vulnerable, and it is necessary to ensure that they are not exposed to intimidation by their employers or by other employees when they seek redress for discrimination.

Ontario's *Pay Equity Act*.

Subsection 9(2) of Ontario's *Pay Equity Act* reads as follows:

> 9.(2) No employer, employee or bargaining agent and no one acting on behalf of an employer, employee or bargaining agent shall intimidate, coerce or penalize, or discriminate against, a person,

(a) because the person may participate, or is participating, in a proceeding under this Act;

(b) because the person has made, or may make, a disclosure required in a proceeding under this Act;

(c) because the person is exercising, or may exercise, a right under this Act;

(d) because the person has acted or may act in compliance with this Act, the regulations or an order made under this Act or has sought or may seek the enforcement of this Act, the regulations or an order made under this Act.

Relief against reprisals.

The Quebec statute authorizes the Quebec pay equity commission to apply to the Commission des relations du travail [Quebec labour relations board] for appropriate relief in cases where there have been reprisals against an employee for exercising rights under the *Pay Equity Act*.[14] Though the remedial consequences are not as clear, the risk of retaliation against employees is recognized in the Prince Edward Island pay equity statute and the Saskatchewan framework.[15]

Sanctions necessary in cases of intimidation, retaliation or coercion.

We are recommending that the statute provide for sanctions to be imposed against employers, employer organizations, employees and employee organizations for acts of intimidation, retaliation or coercion against employees or others who are exercising rights or carrying out responsibilities under the statute.

14.3 The Task Force recommends that the new federal pay equity legislation provide authority to the proposed Canadian Pay Equity Hearings Tribunal, described in Chapter 17, to award compensation for acts of intimidation or reprisal by employers, employees, employer organizations or employee organizations against employees or others who are exercising their rights or carrying out responsibilities under the legislation.

A power to impose sanctions may be appropriate to address not only acts of intimidation but also other violations of the statute, including fraud or falsehood, bargaining in bad faith, reductions of wages, refusal to participate in activities as directed by the Commission or the Tribunal, or refusal to otherwise comply with directions from the Commission or its review officers or the Tribunal.

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[14] Quebec. *Pay Equity Act*, S.Q. 1996, c. E-12.001, s. 107.

[15] Prince Edward Island. *Pay Equity Act*, R.S.P.E.I. 1988, c. P-2, s. 18; Saskatchewan, (1999), *Equal Pay for Work of Equal Value and Pay Equity Policy Framework*.

We think that a number of sanctions should be available to the Tribunal for use to correct behaviour or to provide redress to persons injured by misconduct. We are recommending that the Tribunal be given the power to impose the following sanctions:

iii) Cease and Desist Orders

Statutory violations.

The power to declare that a statutory violation has occurred and to direct that this violation be discontinued is an important element in this range of sanctions. In many cases, the identification of misconduct and the notice it attracts is sufficient to convince the offending party to refrain from further violations.

If it does not have this effect, it is possible to provide reinforcement for this declaration in the form of other sanctions, or by recourse to the enforcement powers of the courts, as we will set out shortly.

iv) Compensation

Power to order compensation.

Subsection 53(3) of the *Canadian Human Rights Act*[16] provides that, when a complaint has been substantiated, the Canadian Human Rights Tribunal can make an order of compensation to the victim or victims of discrimination.

General issue of hurt feelings.

In its decision in the case of the *Public Service Alliance of Canada* v. *Treasury Board,* the Canadian Human Rights Tribunal concluded that compensation for hurt feelings—an element of the remedial scheme in the case of many other kinds of human rights complaints—is not suitable as a remedy in a case of systemic discrimination, as it is impossible to assess the weight of such an emotional component where the complaint is not based on personal conduct towards an individual.

In that decision, the Tribunal commented:

> We are of the view that an entitlement under s. 53(3)(b) of the Act requires an evidentiary basis outlining the effects of the discriminatory practice for the individuals concerned. An award for hurt feelings is personal and is usually awarded in the context of direct discrimination. During the course of a hearing a tribunal will assess entitlement after hearing from individuals about the effects of the discrimination upon him or her. [...] In our view, the impact of delays giving rise to disappointments, frustrations, maybe even sadness or anger, although legitimate reactions, do not measure up, in our

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[16] Canada, *supra,* note 1.

> opinion, to the degree and extent of hurt feelings and loss of self-respect that s. 53(3)(b) is directed towards remedying.
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> The discriminatory practice in this case has its genesis in societal attitudes and history, shared by both males and females. Attitudes about female work are undergoing change with increased awareness, education and legislation. The problem here is systemic and it has occurred in the Employer's pay system. To grant the Commission's and the Alliance's request would amount to an award for hurt feelings, en masse, which is not, in our view, what is contemplated by s. 53(3)(b).[17] [Paragraphs 496 and 497]

We agree with the conclusion that this particular kind of remedy is difficult to apply. It must be pointed out, however, that the observations of the Canadian Human Rights Tribunal in the passage above were made in the context of a complaint-based regime. To our knowledge, the possible utility of damages for emotional harm in relation to the systemic aspects of wage discrimination under proactive pay equity legislation has not been examined. It would be necessary to examine the implications of this remedy in more detail.

Dissenting comment of Professor Marie-Thérèse Chicha regarding hurt feelings: Without referring to any particular case, I believe that, in the context of a complaint-based regime, hurt feelings can result from situations of systemic wage discrimination. Testimonies from female workers as well as research results indicate that the under valuation of women's work and the refusal of an employer to pay women equal pay for work of equal value is a major infringement of their dignity and could result in entitlement to moral damages.

Hurt feelings in the context of reprisals or coercion.

It is also important that where a participant in the process is harmed by delay in meeting deadlines or other violations of the legislation, policies, guidelines or regulations setting out the requirements of the process, the proposed Canadian Pay Equity Hearings Tribunal is able to award compensation for that loss, and to require that the compensation be paid by the party which has caused the loss. In this context, for example, the proposed Tribunal might order the payment of retroactive wage adjustments with interest in cases where an employer has failed to meet the scheduled dates for such adjustments.

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[17] *Public Service Alliance of Canada* v. *Treasury Board*. T.D. 7/98.

The same cannot be said, however, about the emotional harm inflicted on employees who are subjected to reprisals or coercion for attempting to exercise their rights under the statute, or in the case of certain other kinds of infractions which may inflict loss or damage on parties affected by the legislation. We are recommending that the Tribunal have the power to order compensation for actual loss or damage, including emotional harm, occasioned by specific violations of the statute.

v) Fines

Paragraph 54(1)(c) of the *Canadian Human Rights Act* provides that, where a complaint is upheld under section 13, which prohibits the transmission of hate messages by telephone, the Canadian Human Rights Tribunal can order the payment of a penalty of up to $10,000.

The power to impose monetary penalties has been given to administrative agencies in restricted circumstances, as this kind of punitive measure is generally regarded as being more appropriately administered by the courts. In the *Canadian Human Rights Act*, the power to impose a monetary penalty is limited to one particular kind of complaint, and is not part of the general remedial arsenal of the Canadian Human Rights Tribunal. It should also be noted that section 54 requires the Tribunal to make a choice between imposing a monetary penalty and awarding compensation to a victim; both kinds of orders cannot be made in the same case.

No provision made for fines.

It is somewhat difficult to anticipate what kind of misconduct under a pay equity statute would make the imposition of a monetary penalty more appropriate than an order compensating a victim or awarding costs to a party to the proceedings. In the event that it is appropriate to consider imposing consequences of a penal nature for flagrant breaches of the statute, it would be possible to pursue a prosecution in a court under the penal provisions we recommend below. We are not convinced that the power to impose fines would add anything useful to the scheme of remedies and sanctions we are outlining here, and we therefore make no recommendation with respect to this sanction.

vi) Directions to Publish or Post Information

Orders to post information.

One aspect of the regime of sanctions which has been used to effect under collective bargaining legislation is the power of a labour tribunal to order that information be posted in the workplace or published. In *National Bank of Canada* v. *Retail*

Clerks International Union,[18] the Supreme Court of Canada held that it was improper for the Canada Labour Relations Board to order an employer to distribute a letter which could be construed as supporting an organizing drive by a trade union; since this sentiment was not sincerely held by the employer, it was found to be a violation of the right of the employer to freedom of speech. The Court also concluded, however, that an order to post a notice which contained factual information about a proceeding and its outcome was not objectionable.

Such directions provide a means of informing employees about the interpretations which the adjudicating body has given to the legislation, advising them of any obligations which have been imposed on their employer and assuring them that they do have recourse in the event of intimidation or coercion.

vii) Orders for Costs

No provision for awarding costs in general cases.

In pursuing its complaint against Treasury Board before the Canadian Human Rights Tribunal, the Public Service Alliance of Canada made an application for an order for the legal costs incurred in its representation of union members. The Tribunal alluded to a case[19] in which legal costs had been awarded to an individual complainant as part of an order for compensation for loss, an order which had been upheld by the Federal Court of Canada. The Tribunal concluded, however, that an order for costs was less appropriate in the kind of case in which a trade union was representing employees with respect to a complaint of systemic discrimination. The Tribunal made the following comments:

> The Respondent contends that the s. 53(2)(c) provision can only award compensation for expenses incurred by the "victim" as a result of discrimination. In this case the Respondent submits the Alliance is not the victim but represents the victim and is paid for its services by the union dues to which the complainant employees, as well as other employees, are required to contribute. [...]
>
> After carefully considering the arguments, having regard to the systemic nature of the discrimination, the complexity of these complaints and the legal and advocacy role of the Alliance in these proceedings, we do not consider an award

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[18] *National Bank of Canada* v. *Retail Clerks International Union*, [1984] 1 S.C.R. 269.

[19] *Canada (Attorney General)* v. *Thwaites*, [1994] 2 F.C. 38.

> of costs to be appropriate and therefore decline to make one.[20] [Paragraphs 504 and 507.]

As with orders for compensation, we think the distinction drawn here by the Tribunal is a meaningful one. Where the parties have attempted in good faith to address an issue of systemic discrimination, and have nonetheless needed the assistance of an adjudicative tribunal to clarify issues, there seem to us to be good reasons not to award costs.

Costs may be awarded in the case of harm, intimidation or bad faith.

On the other hand, it would be appropriate, in our view, to empower an oversight agency to award costs where it concludes that an individual has suffered harm, as might be the case where an allegation of intimidation is made, or where delays or other complications which add unnecessarily to the expense of the proceedings or to the work of the oversight agencies are clearly attributable to the conduct of one of the parties. In any case, it is important that the statute specify clearly that the agency have this authority.

14.4 **The Task Force recommends that the proposed Canadian Pay Equity Hearings Tribunal, described in Chapter 17, be given the authority to:**

- **order that a violation of the statute be discontinued and not repeated;**
- **order compensation where harm to individuals or legal persons can be established;**
- **order the disclosure and publication of information; and**
- **award costs in appropriate and limited circumstances.**

Pay Equity Adjudicators

Adjustication system for disputes over pay equity plan.

In Chapter 17, we will be recommending the establishment of a system of adjudication, comparable to grievance arbitration under a collective agreement, which could address in an expeditious way disputes on issues of interpretation arising out of a particular pay equity plan.

Adjudicators should have remedial powers.

Remedies must support continued relations.

In recent years, the courts have acknowledged the need for labour arbitrators to have broad remedial powers to address issues relating to the interpretation and application of collective agreements. In *Weber* v. *Ontario Hydro*,[21] the Supreme Court of Canada found that an arbitrator should have the authority to fashion remedies which are appropriate to the resolution of any dispute which "in its essential character" arises from a collective agreement, including the power to award damages and to interpret the *Canadian Charter of Rights and Freedoms.*

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[20] *Public Service Alliance of Canada* v. *Treasury Board*. T.D. 7/98.

[21] *Weber* v. *Ontario Hydro*, [1995] 2 S.C.R. 929.

Obviously, the analogy between labour arbitrators and the kind of adjudication we propose is not a complete one, as pay equity plans are not as comprehensive as collective agreements. The comparison with grievance arbitration does, however, draw attention to the value of a flexible remedial regime which permits the adjudicator to devise remedies which are suitable to a resolution of the immediate dispute. These remedies must also support the continuing relationship within which the parties must address related issues.

Just as it is difficult to be too precise about the full range of arbitral remedies which may be necessary, it is hard to provide a complete catalogue of solutions which a pay equity adjudicator might formulate. The description of the authority of these adjudicators should, however, be broad enough to permit them to make use of remedies like the following:

- the determination of the gender predominance of new job classes;
- the assessment of value of a newly created job;
- the approval of amendments to the pay equity plan once it has been implemented; and
- the interpretation of particular terms of the pay equity plan.

14.5 The Task Force recommends that the new federal pay equity legislation provide that pay equity adjudicators be empowered to devise flexible and innovative remedies in the interpretation and application of pay equity plans.

Prosecutions and Penal Sanctions

Statutory violations are offences that can incur fines or imprisonment.

Virtually all regulatory statutes contain provisions which render a violation of the statute an offence, and they prescribe penalties in the form of fines or terms of imprisonment. The determination as to whether an offence has been committed under the statute is secured through a prosecution before a court.

Although there have been a number of recent examples of prosecutions under environmental statutes, for example, prosecutions of this kind are relatively rare. The low incidence of such prosecutions is attributable to the fact that administrative agencies possessing a thorough understanding of the public policies embodied in the statute are considered to provide adequate recourse. Administrative agencies have also tended to focus on providing compensation for harm rather than punishing offenders.

Penal sanctions for persistent non-compliance or repeated intimidation.

It is likely, however, that there will be circumstances where a prosecution in a criminal court and the imposition of penal sanctions would be an appropriate response to persistent flouting of statutory requirements, or to repeated instances of intimidation or coercion.

Quebec's *Pay Equity Act*.

A useful model.

Chapter VIII of the Quebec legislation provides a useful model for such penal provisions:[22]

> 115. Whoever
>
> 1) contravenes [certain sections of the Act]
>
> 2) fails to furnish to the Commission a report, a document or information referred to in section 95, or furnishes false information,
>
> 3) takes or attempts to take reprisals as described in section 107, or
>
> 4) hinders or attempts to hinder the Commission, a member or mandatary of the Commission or a member of its personnel in the performance of its or his duties,
>
> is guilty of an offence and is liable to a fine of not less than $1,000 nor more than $25,000.
>
> For a second or subsequent offence, the amounts set out in the first paragraph shall be doubled.
>
> 116. Any person who aids, encourages, counsels, allows, authorizes or orders another person to commit an offence under this Act is guilty of an offence. A person found guilty under this section is liable to the penalty prescribed in section 115.
>
> 117. In determining the amount of a fine, the court shall take particular account of the injury suffered and the benefits derived from the commission of the offence.
>
> 118. Penal proceedings for an offence against this Act may be instituted by the Commission.

These kinds of provisions emphasize that violations of an equity statute are not trivial matters, that they are, in fact, viewed under the rubric of criminal behaviour, and represent conduct which is inconsistent with important public interests.

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[22] Quebec, *supra*, note 14. See also section 60 of the *Canadian Human Rights Act*, R.S.C. 1985 c. H-6.

14.6 The Task Force recommends that the new federal pay equity legislation provide that violations of the statute be defined as offences, and that prosecution and the imposition of penal sanctions be a remedy available under new pay equity legislation.

Enforcement by the Courts

Tribunal order should have the same effect as a court order.

Section 57 of the *Canadian Human Rights Act* reads as follows:

> 57. An order under section 53 or 54 may, for the purpose of enforcement, be made an order of the Federal Court by following the usual practice and procedure, or by the Commission filing in the Registry of the Court a copy of the order certified to be a true copy.[23]

Such provisions, which have the effect of giving the order of a tribunal the same effect as the order of a court, permit the tribunal to invoke the considerable enforcement powers of the courts. In the case of orders for monetary payments, the enforcement of an order by the courts can be carried out by following the same processes which are used to enforce judicial orders, including seizure and judicial sale of property. If an order filed in this manner is not complied with, those for whose benefit the order was passed may also initiate contempt proceedings.

Orders filed with courts must be clear and specific.

It should be noted that a court which is asked to enforce orders in this context can only deploy its enforcement powers if it is clear what is required from the party subject to the order. It is therefore important that orders which are filed with the court are clear and specific. This is a particularly significant consideration where the tribunal has devised a complex remedial solution which has a number of interrelated components.

Enforcement by courts useful in ensuring compliance.

The issues raised in pay equity proceedings will often result in orders which address specific aspects of the pay equity process, the responsibility of the participants at various stages, or the requirement to provide particular sums of money. We are confident that the enforcement mechanisms available to the courts would be of assistance in bringing about compliance with such orders. The filing of orders with the courts for enforcement may also be useful where particular conduct is at issue, and an order has, for example, required the cessation of acts of intimidation or has directed parties to act in good faith; in these instances, the power of a judge to cite a party for contempt may provide further leverage for the implementation of tribunal orders.

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[23] Canada, *supra*, note 1.

14.7 The Task Force recommends that the new federal pay equity legislation provide for the filing and enforcement of orders through the Federal Court.

Conclusion

We have outlined here a scheme for the enforcement of the provisions of pay equity legislation which would provide a wide range of remedies and sanctions to address different circumstances. In many cases, the most appropriate way to pursue the goals of the legislation is through a process of information and assistance which will equip the parties with the knowledge and skills they need to bring their compensation systems into compliance with the statute, and impress upon them the social importance of the policies articulated there.

It is necessary, however, to provide for situations where this educational and collaborative process is not successful in bringing about the required changes. In this context, the legislation must provide remedies and sanctions which will act, as incentives for compliance, and, in extreme circumstances, constitute punishment for undesirable conduct.

The remedial catalogue we have laid out here is directed at the enforcement of a particular statute dealing with the important but limited issue of pay equity. Though we hope that a pay equity statute of the kind we are proposing in this report would have a positive effect in the correction of wage discrimination, we recognize that such legislation does not exist in a vacuum. The statutory scheme we are talking about here must be seen against a broader context of the measures which must be taken by governments and other actors to improve the economic status of women and to create an environment in which they can, as equal members, reach their full potential as contributors to and equal members of Canadian society. The commitment which Canada has made in international forums to pursuing equality for women, and which has been embodied in *Setting the Stage for the Next Century: The Federal Plan for Gender Equality*,[24] requires assessment of many factors affecting women, including child care, educational opportunity and access to employment.

Though we think that the enforcement measures we have suggested will provide solid support for the implementation of legislation devoted to the issue of pay equity, these measures would have considerably more resonance in an environment characterized by a general commitment to gender neutrality and equality for women.

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[24] Status of Women Canada (SWC). (1995). *Setting the Stage for the Next Century: The Federal Plan for Gender Equality.*

Chapter 15 – Timelines and Transition

Two challenges in instituting new pay equity legislation.

There are two challenges in instituting new pay equity legislation which we will be addressing in this chapter. The first is setting reasonable target dates for employers to bring themselves into compliance with the statute.

The second of these challenges is clarifying the position of existing pay equity plans or systems, and the status of proceedings which are going forward under section 11 of the *Canadian Human Rights Act* (CHRA).

Target Dates and Timelines

Setting appropriate targets for the pay equity process.

The problem of setting appropriate targets for the completion of the pay equity process is a serious one, and has presented a dilemma to those formulating pay equity legislation.

> The PSAC recognizes that timetables must be flexible so that small, medium and large employers at different stages in pay equity expertise are not faced with unrealistically short, or unnecessarily long, time frames within which to identify and implement a pay equity plan.
>
> Public Service Alliance of Canada (PSAC). Final submission to the Pay Equity Task Force, November 2002, pp. 8-9.

Wages cannot be reduced to eliminate discrimination.

In many instances experience suggests that the pay equity process will reveal a relatively small wage gap which must be addressed by the pay equity plan. In other instances, however, there may be a sizeable wage gap between male and female jobs, and the cost to an employer of making adjustments may be considerable. Pay equity legislation typically removes the option for employers to reduce wages in order to eliminate discrimination, and therefore the cost of making wage adjustments must be met by adding to the wage bill.

Discriminatory wage practices.

However, it must be remembered that the need for these adjustments arises from wage practices which have been identified as discriminatory. Employees and their representatives argue that the financial burden of this discrimination has already been borne by female workers, and that they should not be required to defer their full wage adjustments for a further indeterminate period just to accommodate the concerns of employers. As the Canadian Labour Congress put it straightforwardly in a submission to the Task Force:

> Employers in this jurisdiction have been under an obligation not to discriminate in the matter of wages for over twenty-five years. Once a pay equity gap is identified, it must be closed—in short order. We do not support a lengthy period for closing the gap.
>
> Canadian Labour Congress (CLC). Final submission to the Pay Equity Task Force, November 2002, p. 9.

The Confédération des syndicats nationaux (CSN) also points out in its submission that other benefits such as employment insurance and pensions are linked to wages, and argue that it is unreasonable to permit long delays in correcting the level of these benefits.[1]

Approach in Ontario and Quebec.

The legislation adopted in Ontario and Quebec illustrates two different approaches to resolving this issue.

Ontario's *Pay Equity Act*[2] includes the following provision in section 13(4):

> 13. (4) The first adjustments in compensation under a pay equity plan are payable as of the date provided for in clause (2)(e) and shall be such that the combined compensation payable under all pay equity plans of the employer during the twelve-month period following the first adjustments shall be increased by an amount that is not less than the lesser of,
>
> (a) 1 per cent of the employer's payroll during the twelve-month period preceding the first adjustments; and
>
> (b) the amount required to achieve pay equity.

Section 13(5) goes on to provide that adjustments should be made on the anniversary date of the first adjustments, and that the total for each of these adjustments under all pay equity plans of the employer is also capped at 1 percent of payroll.

These provisions are open-ended; that is, the 1 percent cap continues to apply for as long as it takes to close the wage gap. Similar capping provisions were contained in legislation in New Brunswick[3] and Prince Edward Island.[4]

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[1] Confédération des syndicats nationaux (CSN). Submission to the Pay Equity Task Force, June 2002.

[2] Ontario. *Pay Equity Act.* R.S.O. 1990. c. P. 7.

[3] New Brunswick. *Pay Equity Act.* R.S.N.B. 1973, c. P-5.01.

[4] Prince Edward Island. *Pay Equity Act,* R.S.P.E.I. 1988, c. P-2.

Saskatchewan framework

The *Equal Pay for Work of Equal Value and Pay Equity Policy Framework*[5] in Saskatchewan states that adjustments are to be "guided by government's fiscal framework" but are to be at least 1 percent of payroll for the affected group per year. The Framework does not include a mandatory timeframe for completing salary adjustment implementation. The Compensation Review Committee is responsible for ensuring the integrity of the pay equity project by recommending that wage adjustments be implemented within a three-to five-year timeframe, depending on feasibility and subject to fiscal constraints.

Manitoba's approach

In Manitoba, section 7(3) of the *Pay Equity Act*[6] provided an annual cap of 1 percent of payroll; it also provided that this cap apply over a period not exceeding four years. The effect of this was effectively to limit pay equity settlements to a maximum of 4 percent of payroll, although the wage gap attributable to discrimination might in fact exceed this amount. A challenge to the constitutionality of the provision in the Manitoba legislation was successful in the case of *Manitoba Council of Health Care Unions* v. *Bethesda Hospital.*[7] In that case, the Manitoba Court of Queen's Bench said:

> Section 7(3) is discriminatory in that it legislatively sanctions the continued payment by the employer to persons performing "women's work" of salaries that are less than equivalent.

The constitutionality of other provisions, such as the capping provisions, which allow for the phasing in of pay equity settlements, has not itself been challenged, and there has thus been no judicial discussion of what time frames are regarded as reasonable for the achievement of pay equity.

The Quebec legislature took a quite a different approach to this issue. Section 37 of the *Pay Equity Act*[8] reads as follows:

> 37. The adjustments in compensation required to achieve pay equity must be determined or a pay equity plan must be completed within four years of the coming into force of this chapter.

Section 38 provides that, in a case where proxy comparisons will be used, the pay equity plan must be completed either within the four years specified in Section 37, or within two years of the coming into force of any special regulation regarding this process, whichever is later.

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[5] Government of Saskatchewan, 1999.

[6] Manitoba. *Pay Equity Act.* C.C.S.M., c. P13.

[7] *Manitoba Council of Health Care Unions* v. *Bethesda Hospital,* (1992), 88 D.L.R. (4th) 60 (Man. Q.B.).

[8] Quebec. *Pay Equity Act.* R.S.Q. 1996, c. E-12.001.

Section 70 of the *Pay Equity Act*[9] provides that:

> 70. Adjustments in compensation may be spread over a maximum period of four years.
>
> Where adjustments in compensation are spread over time, the instalments must be annual and equal in amount.

Section 71 provides that, if the adjustments are not made according to this timetable, interest will be paid on unpaid adjustments. Section 72 gives the Commission de l'équité salariale [Quebec pay equity commission] some flexibility in applying these provisions where an employer can demonstrate that adhering to the timetable will result in hardship:

> 72. The Commission may, subject to the conditions it determines, authorize an employer who shows that he is unable to pay the adjustments in compensation to extend by a maximum of three years the period over which the adjustments are spread.
>
> The Commission may, however, where it has reasonable grounds to believe that the financial situation of the employer has improved, order payment of the adjustments or determine new terms and conditions.
>
> The Commission may, for such purposes, require of the employer that he furnish any document or information and that he report on any steps he has taken to obtain a loan from a financial institution.

Discrimination cannot be corrected overnight.

In our discussions with them, representatives of employees acknowledged that entrenched patterns of wage discrimination cannot be corrected overnight. They also recognized that the process of analysing jobs and attaching value to them is a complex one which may take some time to complete. On the other hand, they expressed their concern that women workers should not be asked to go on bearing the cost of a discriminatory wage structure any longer than absolutely necessary. They also stated that any flexibility in the time lines established should not provide a refuge for recalcitrant or dilatory employers.

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[9] Ibid.

> [TRANSLATION] The law must specify a realistic and mandatory timetable for the process and the implementation of wage adjustments.
>
> We recommend that these provisions require employers to implement the pay equity process without waiting to the last minute.
>
> [...]
>
> In the spirit of the right to pay equity, it is important that employers correct inequities as rapidly as possible.
>
> Fédération des travailleurs et travailleuses du Québec (FTQ). Submission to the Pay Equity Task Force, April 2002, p. 10.
>
> Clear timelines must be established within which pay equity must be achieved. This includes set time frames for education, establishment, working with employees, dispute resolution and payouts. Clear penalties must be set out for a failure to meet any such obligation, or there will be no incentive to fulfill these obligations.
>
> British Columbia Federation of Labour (BCFL). Submission to the Pay Equity Task Force, May 2002, unpaginated, see section "How will proactive pay equity work?"

Entitlement to equal pay for work of equal value is a fundamental human right.

Though we have emphasized that the entitlement to equal pay for work of equal value is a fundamental human right, we recognize that the correction of wage discrimination must be approached in a functional and practical way. In this respect, we think that the model set forth in Quebec's *Pay Equity Act* has much to recommend it, for the following reasons:

- Section 37 sets a clear target date for all employers to complete the pay equity process, and thus establishes clear parameters within which the pay equity process will be conducted.
- Though the length of time which is specified may be open to debate, a time frame of three years seems to us to make reasonable provision for the completion of a pay equity plan.
- Section 70 makes allowance for the phasing in of pay equity adjustments, but, unlike the Ontario legislation, establishes a final horizon by which these adjustments must be finalized. This seems to us to be a good way of ensuring

that discriminatory wage practices will come to an end within a finite period of time without placing unreasonable pressure on an employer.

- Section 72 creates a degree of flexibility for the oversight agency to permit additional time to an employer for whom this timetable would create genuine hardship. Rather than creating a protracted timetable for all employers, this places the onus on an employer to demonstrate why it is impossible under the employer's particular circumstances to meet the statutory targets.

The Quebec legislation also provides that the first payment is to be made when the employer posts the final schedule showing the required adjustments. We think that the legislation should specify that the first wage adjustment is to be paid at this time.

We are cognizant of the fact that it will take some time for the oversight agencies to implement the policies, rules and instruments which will make it possible for employers to carry out their obligations under the statute. We are therefore suggesting—again borrowing from the example of Quebec—that the period of three years designated for the preparation of pay equity plans commence one year after the statute comes into effect, to allow time for the start-up phase of the oversight agencies which we describe in Chapter 17.

Federal Contractors Program (FCP).

Given that we have recommended that federal contractors be brought within the scope of the legislation through the Federal Contractors Program (FCP), it is necessary for the statute to indicate how the time frames will apply to those employers. We are recommending that the same timetable should be used for FCP employers, beginning with the date the contract is entered into.

15.1 The Task Force recommends that the new federal pay equity legislation provide that:

- **all employers must complete their pay equity plans in a specified period of three years, this period to begin one year after the legislation comes into force;**
- **each adjustment should be at least 1 percent of payroll, with the final adjustment the equivalent of any remainder;**
- **pay equity adjustments may be phased in over a period not to exceed three years, the first adjustment to be made at the time the employer posts the final pay equity plan showing the schedule of adjustments;**

- **the oversight agencies, described in Chapter 17, may permit an employer up to two further periods of one additional year for the payment of wage adjustments if the employer can demonstrate that more rapid payment will cause undue hardship; and**
- **employers governed by the Federal Contractors Program are required to adhere to the same timetable, beginning with the date their contract is entered into.**

The advantage of specifying time frames in the way we have suggested is that it makes clear to the parties that they must institute the process of formulating a pay equity plan in an expeditious fashion. This schedule does, however, foresee that there will be a considerable amount of activity required for both the participants and the oversight agencies proposed in Chapter 17 during the period during which plans are being formulated.

Oversight agencies require sufficient resources.

One of the implications of this is that consideration should be given to providing oversight agencies with additional resources over this critical period to ensure that they can assist the parties appropriately as well as making any determinations concerning issues over which disputes arise.

15.2 The Task Force recommends that the new federal pay equity legislation provide oversight agencies with additional resources for the period specified in the legislation for the formulation of pay equity plans by all employers.

Development of pay equity plans must be timely with clear deadlines provided in the legislation.

It was pointed out to us in our discussions with stakeholders that creating a clear deadline for the completion of pay equity plans does not ensure that employers will set about the process of formulating their plans in an expeditious manner. It is, in our view, important that the process begin as early as possible in the period allowed for the preparation of pay equity plans, in order to permit sufficient time for discussion and, if necessary, revision of the plans. We are therefore suggesting that the legislation require that employers embark on the process no later than one year after the statute comes into force.

Employers should report on a regular basis.

We also think that employers should be required to report on a regular basis during the period specified in the legislation concerning their progress towards the formulation of a pay equity plan. This would be helpful to participants, in our view, as it would be a reminder of the obligation to have the plan completed within time limits, and would permit the oversight agencies to identify any problems which have surfaced in the process of putting together a plan. Though such frequent reports may not be necessary once a plan has been put in place, we think that, at this stage, the reporting requirements would help to establish a structure for the process of pay equity analysis.

15.3 The Task Force recommends that the new federal pay equity legislation require that employers commence the process of preparing a pay equity plan no later than one year after the legislation comes into force, that they be required to report annually on their progress towards formulating a pay equity plan during the period specified in the legislation for this phase, and that they also be required to report annually during the period when wage adjustments are being made. These reports may take the form of any posting which the employer is required to make at any stage of the process.

Recommendation 15.3

Dissenting recommendation by Professor Marie-Thérèse Chicha, Member, Pay Equity Task Force.

In my opinion, if the oversight agencies are to work effectively, it is imperative that they receive reports on the pay equity plans and on the maintenance of the results. The reports to be submitted to the oversight agencies consist of the three successive postings required during the development of the pay equity plan as well as the postings required during the maintenance of pay equity. In my opinion, an obligation which requires employers to remit annual reports during the four years it may take to develop the pay equity plan and during the three years over which the pay adjustments are made may prove burdensome for both employers and the proposed Canadian Pay Equity Commission.

This is why I recommend changing Recommendation 15.3, as follows:

All employers are required to begin developing their pay equity plans within a year of the coming into effect of the proposed legislation. All employers are required to send the proposed Canadian Pay Equity Commission all the postings provided for by the legislation, as recommended in Chapters 8 and 13, as soon as these postings are displayed in their establishments.

Monitoring

Legislation should require reviews of pay equity plans.

We have recommended that the new legislation require employers to report on their progress towards the formulation and implementation of a pay equity plan. We are of the view that the legislation should also provide for the regular review and, if necessary, amendment, of pay equity plans once they have been put in place. In Chapter 13 of this report dealing with the maintenance of pay equity plans, we have discussed in detail the requirements which should be put in place to ensure that plans are systematically reviewed and updated. In that chapter, and in other parts of the report, such as Chapter 6, which examines successorships, we have described the kinds of changes in circumstances—major alterations to corporate structure, or the elimination or addition of job classes, for example—which may necessitate review and, possibly, amendment of an existing plan. A complaint to an oversight agency might also trigger such a review. Even apart from these specific occasions for review, we would favour instituting a regular review process.

15.4 **The Task Force recommends that the new federal pay equity legislation require that an employer review the pay equity plan at a prescribed interval of three years, communicate the results of this review to employees with an opportunity for their response, and report to the proposed Canadian Pay Equity Commission, described in Chapter 17, on the results of this review; and that a report concerning a review triggered by a complaint or a change in circumstances be accepted as meeting this requirement.**

Transition

Transition period is important.

A second issue which must be addressed is the determination of the status of pay equity settlements which have already been reached, through litigation under section 11, by voluntary agreement, or in compliance with pay equity legislation in other jurisdictions. It is also necessary to consider the status of proceedings which are currently going on. This was not really an issue in the case of the Ontario legislation, because there had not been any recognized pay equity process prior to the passage of the *Pay Equity Act*. In Quebec, however, some pay equity settlements had been reached, and there had been some litigation citing the equal pay provisions of the Quebec *Charter of Human Rights and Freedoms*, so it was necessary that pay equity legislation give some indication of the status of these settlements.

Chapter IX of Quebec's *Pay Equity Act* addresses the status of pay equity plans completed prior to the coming into force of the Act:

> **Requirements**
>
> 119. A pay equity or relativity plan completed before 21 November 1996 is deemed to have been established in accordance with this Act if it includes
>
> 1) an identification of job classes and an indication of the proportion of women in each job class;
> 2) a description of the methods and tools used to determine the value of job classes and a value determination procedure having taken into account such factors as required qualifications, responsibilities, the effort required and the conditions under which the work is performed; and
> 3) a method for valuating differences in compensation.
>
> **Job class comparison**
>
> In addition, the plan must have allowed each predominantly female job class to be compared with predominantly male job classes.
>
> **Discrimination**
>
> The employer must have ensured that no element of the pay equity or relativity plan discriminates on the basis of gender and that all elements are applied on a gender-neutral basis.
>
> **Requirements**
>
> The same applies to a pay equity or relativity plan in progress on 21 November 1996, if on that date it also meets either of the following conditions:
>
> 1) the plan is completed in respect of at least 50 percent of predominantly female job classes concerned; or
> 2) the determination of the value of job classes has begun.

Chapter IX further requires that employers who wish to take advantage of these deeming provisions must provide a report to the Quebec pay equity commission to demonstrate that the plan meets the requirements. The Quebec pay equity commission is then to determine whether the plan described in this report does actually meet these criteria.

Transition provisions in Quebec legislation are controversial.

On the face of it, this provision seems to articulate a practical way of testing whether plans which have already been put in place meet the objectives of pay equity legislation without requiring that these employers go through the entire process again. Yet these provisions of the Quebec legislation have been very controversial, and have been seen by labour organizations and employee representatives as a means by which employers can evade their obligations under the Act. The following comment of a Quebec labour organization is representative of these views:

> [TRANSLATION] The impact of pay equity legislation must not be compromised by providing loopholes for employers as is the case with Chapter IX of the Quebec statute. This chapter of the Act, which deals with exceptions, has permitted a very large number of employers in all industrial sectors to evade their obligation to implement pay equity in Quebec. [...] Without having the actual figures, we estimate that almost one woman worker in two in Quebec is excluded from the application of the Act.
>
> Fédération des travailleurs et travailleuses du Québec (FTQ). Submission to the Pay Equity task Force, April 2002, p. 7.

A number of trade unions expressed their opposition to Chapter IX of the Quebec legislation by bringing a constitutional challenge before the Quebec Superior Court. In early 2004, the Court found that Chapter IX is inconsistent with the stated purpose of the pay equity statute, and that it constitutes a violation of section 15 of the Canadian Charter.[10] On February 5, 2004, Quebec's Attorney General announced that the judgment would not be appealed.

It is difficult to determine all of the reasons behind the dissatisfaction with this aspect of the Quebec legislation. However, references were made to the passivity of the Quebec pay equity commission in ensuring that employers apply the criteria of the *Pay Equity Act* rigorously to these established pay equity plans, and in taking due care in verifying that these plans meet the standards set out in the legislation.

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[10] *Syndicat de la fonction publique v. Procureur général du Québec*, [2004] J.Q. no. 21.

It also appears that the reference in section 119 of the Quebec statute to "relativity plans" allows employers to put forward for consideration plans which have not been formulated according to criteria appropriate to pay equity. We would not recommend that the statute contain any reference to such "relativity plans."

Section 119 of the Quebec statute permits the approval of pay equity plans which are "in progress" at the time of the coming into effect of the statute. It is our view that, even though this part of section 119 limits this approval to cases where the plan is "completed in respect of at least 50 percent of predominantly female job classes" and the "determination of the value of job classes has begun," this "in progress" provision creates too much uncertainty.

Pay equity must be taken seriously.

The premise underlying the passage of any new pay equity legislation in the federal jurisdiction would be that it is needed to ensure that the objective of achieving pay equity is taken seriously and that the methods followed in combating wage discrimination can meet the overarching standard of gender inclusiveness. In order to ensure that the statute has uniform application and effect, it is necessary to ensure that all compensation practices and wage structures are assessed for their compliance with such standards.

Many employers have taken steps to implement pay equity.

On the other hand, many employers under federal jurisdiction have put considerable effort and invested significant resources to carry out pay equity analyses and the implementation of pay equity settlements. In some cases this is the result of voluntary initiatives. In other cases, it has been influenced by litigation under section 11. In the course of this process, a number of pay equity settlements have been subjected to close scrutiny by third parties—tribunals and courts—which have commented, often at length, on their compatibility with tests of gender inclusiveness and the concept of pay equity.

> The establishment of a new regulatory regime for pay equity should not mean that all employers under federal jurisdiction must develop new pay equity plans. Many federally regulated employers have been committed to pay equity for 25 years and have well established, gender neutral systems in place that are the result of previously developed plans, as well as much effort.
>
> Canadian Bankers Association (CBA). Submission to the Pay Equity Task Force, November 2002, p. 6.

It is important, in our view, that pay equity plans in all federally-regulated workplaces ultimately comply with the standards required by the new legislation. The scheme we are proposing sets out a process for ensuring these standards are met, and, furthermore, that they are maintained. We have outlined criteria for the assessment of pay equity plans, emphasized the need to be alert to possible gender bias, and provided for employee participation in the process. We do not favour the inclusion of a grandfather clause which would prevent or undermine the critical assessment of whether particular pay equity plans are in full compliance with the legislation.

All employers must follow the same process for establishing a pay equity plan.

We are recommending that all employers should be required to follow the process set out in the statute for establishing a pay equity plan, in order to test whether their existing plan can satisfy the requirements of the statute. It is also the only effective way of setting a consistent baseline for the measurement of whether plans are being maintained. In the event that an existing plan has been formulated in a way which is effective to deal with wage discrimination, it should be a relatively straightforward matter to demonstrate that it meets the demands of the statute.

Since section 11 came into effect in 1977, there has been considerable discussion by the Canadian Human Rights Tribunal and by the courts of issues which may have continued relevance to the understanding of the new legislation. Where this is the case, this jurisprudence may provide useful guidance to the parties as they continue to make progress towards achieving pay equity.

15.5 The Task Force recommends that the new federal pay equity legislation provide that where there has been a decision of the Canadian Human Rights Tribunal concerning any issue, or a final disposition of an issue by the Federal Court of Appeal or the Supreme Court of Canada, the disposition of that issue should be accepted by the new proposed pay equity oversight agencies, described in Chapter 17, insofar as it is consistent with the provisions of the new legislation; where, however, the ruling or decision concerns only part of the workforce covered by a pay equity plan, it should be viewed as authoritative only for aspects of the plan to which it is directly relevant.

A further issue arises concerning applications and disputes which are pending before the Canadian Human Rights Commission, the Canadian Human Rights Tribunal or the courts. In some instances, these cases have been under consideration for a number of years, and have required the parties to devote considerable time and resources to the analysis of the issues involved. The parties involved in these cases have an understandable concern that the status of these proceedings be clarified.

New legislation must include consistent criteria.

On the one hand, the participants are undoubtedly concerned about having these onerous and expensive proceedings come to naught, and we have some sympathy for this position. On the other hand, it is important for a new statutory regime to be able to develop consistent criteria and interpretive approaches. The parties themselves may find it preferable to work within the new statutory framework.

The parties may, of course, elect to continue with the proceedings they have started, subject to the consideration that some issues which have been raised may be rendered moot by new legislation. This may be an attractive option where the proceedings are close to completion. In the event the parties elect to continue with the proceedings, the ultimate disposition of the issues would be subject to the same provisions we have recommended earlier to deal with proceedings which are already complete; the disposition of these issues, at least insofar as it appears to be consistent with and relevant to, the new legislation, would be the basis for approving the pay equity plan.

On the other hand, the party which has commenced the proceedings may choose to abandon them on the grounds that the new legislation provides more effective or more expeditious recourse.

In either case, these avenues would not be closed to the parties by the passage of new legislation.

Compensation systems of all employers must satisfy the requirements of any new legislation.

The shift from one statutory regime to another is always difficult, and it will be particularly complicated in this case because of the protracted nature of the proceedings which have taken place under section 11, and the investment which has been made in pursuing the issues which have been the grounds for those proceedings. It is possible that a significant part of the information gathered and the lessons learned about particular issues may fit well within the context of the new legislation, and we would expect that new oversight agencies would permit the parties to make use of this experience in an efficient and constructive way. It is necessary to ensure, however, that the compensation systems of all employers can satisfy the requirements of the new legislation, and litigation which has been conducted in a different statutory context may be of limited assistance in this changed environment.

There may be complaints filed under section 11 which are being investigated by the Canadian Human Rights Commission at the time new legislation comes into force. Rather than require that a new investigative process be commenced, we are recommending that the investigation be completed by the CHRC and the results communicated to the oversight bodies which are proposed to administer the new statute.

15.6 **The Task Force recommends that the new federal pay equity legislation provide that in the event a complaint is under investigation by the Canadian Human Rights Commission, this investigation proceed to a conclusion. In the event there is a recommendation to refer the complaint for adjudication, it would be referred to the proposed Canadian Pay Equity Hearings Tribunal described in Chapter 17.**

Chapter 16 – Pay Equity and Collective Bargaining

In this chapter, we will be considering the complex issue of whether pay equity legislation can be compatible with the institution of collective bargaining, which affects many workers in the federal jurisdiction. Though trade unions have in a number of cases taken the lead in pressing claims for pay equity on behalf of the workers they represent, the current structures and legal frameworks of collective bargaining have some limitations as a foundation for a comprehensive attack on wage discrimination.

We will be looking at the basic features of the Canadian collective bargaining system, and considering how this system might dovetail with desirable changes in pay equity legislation. We will also be considering the respective roles which may be played by unions and employers, and the implications these roles may have for collective bargaining as it now exists.

> By any measure, organized women are notably better off than their non-union counterparts.
>
> Anne Forrest. (2003). *After the Pay Equity Award: Can Collective Bargaining Maintain Equal Pay for Work of Equal Value?* Unpublished research paper commissioned by the Pay Equity Task Force, p. 3.

Collective bargaining – important vehicle for workers.

Collective bargaining has been an important vehicle for Canadian workers to improve their economic status, and to gain some measure of influence with their employer over the determination of their terms and conditions of employment. There is a clear differential in wages between workers who are represented by trade unions and those who are not, though this differential narrows somewhat during downturns in the economic cycle. Studies have been done which also indicate that unionization has the effect of reducing the difference between the wages of male and female workers covered by a collective agreement.[1] For example, using 1997 data on the overall wage gap, a recent study showed that unionized women earned 86.6 percent of the hourly wages of unionized men, in contrast to the picture in the non-union sector, where women earned only 76.5 percent of men's wages.[2]

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[1] See, for example, Anne Forrest. (2003). *After the Pay Equity Award: Can Collective Bargaining Maintain Equal Pay for Work of Equal Value?* Unpublished research paper commissioned by the Pay Equity Task Force, p. 6.

[2] Marie Drolet. (2001). *The Persistent Gap: New Evidence on the Canadian Wage Gap.* Statistics Canada, Analytical Studies Branch, Research Paper Series No. 157, p. 28.

Canadian Collective Bargaining System

The basic premise of the legislative regime related to collective bargaining is that workers should be permitted to pool the bargaining strength they possess as individuals so that they can deal with their employer on a more even footing. Given the legal restrictions surrounding the traditional contractual relationship between employers and their individual employees, it was necessary to put in place a legislative framework which would permit and support a relationship founded on collective, as opposed to individual, action by employees.

Canada – Common features of collective bargaining.

The distinctive legislative framework in place in North America emerged first in the United States in the 1930s with the passage of the *Wagner Act* in 1935, and appeared in Canada in the 1940s. Constitutionally speaking, Canadian collective bargaining law falls within the jurisdiction of the provinces, with the exception of legislation covering those employees in the federal jurisdiction whose interests are the subject of this report. Though there are variations in the legislation from jurisdiction to jurisdiction, there are important common features of collective bargaining legislation in Canada:

Independent labour tribunals.

- **Decision making by independent labour tribunals.** Under collective bargaining legislation in Canadian jurisdictions, decisions concerning the interpretation and application of collective bargaining legislation are made by independent tribunals whose members include representatives of employees and employers, along with people who are neutral as regards these interests. In the federal jurisdiction, the Public Service is governed by the *Public Service Staff Relations Act,*[3] which is administered by the Public Service Staff Relations Board. Other employers under federal jurisdiction are covered by the *Canada Labour Code, Part I*[4] which is administered by the Canada Industrial Relations Board.

Right to organize.

- **Right to organize.** Canadian collective bargaining legislation permits employees to make the choice to be represented by a trade union for the purpose of bargaining collectively with their employer. This choice allows them to maximize their economic influence on their employer. It also gives these employees an ability to help to determine the conditions and rules under which they work.

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[3] Canada. *Public Service Staff Relations Act.* R.S.C. 1985, c. P-35.

[4] Canada. *Canada Labour Code.* R.S.C. 1985, c. L-2.

> Collective bargaining is not simply an instrument for pursuing external ends, whether these be mundane monetary gains or the erection of a private rule of law to protect the dignity of the worker in the face of managerial authority. Rather, collective bargaining is intrinsically valuable as an experience in self-government. It is the mode in which employees participate in setting the terms and conditions of employment, rather than simply accepting what their employer chooses to give them (which, if the employer happens to be benevolent, may be just as generous compensation, just as restrained supervision).
>
> Paul Weiler. (1980). *Reconcilable Differences: New Directions in Canadian Labour Law.* Toronto: Carswell, p. 33.

Appropriate bargaining unit.

- **Appropriate bargaining unit**. The means of measuring whether employees have asserted their choice to be represented by a trade union is the concept of the appropriate bargaining unit. A group of employees defined by the criteria of coherence and common interest is the constituency which is used to determine whether a majority of employees favour the use of the vehicle of collective bargaining to settle their terms and conditions of employment with their employer.

Exclusive representation.

- **Exclusive representation**. If a trade union is successful in demonstrating that it enjoys the support of the majority of the employees in an appropriate bargaining unit, it can become certified to represent that group of employees. This confers on the trade union legal status as the exclusive representative of that group of employees for the purpose of determining the terms and conditions of employment for the employees, and it is not open to the employer to deal with the employees separately, or to recognize any different representatives of the employees.

Duty to bargain.

- **Duty to bargain**. One of the most significant features of post-war collective bargaining law is the imposition of a legal duty on the employer and the trade union to bargain in good faith with a view to reaching an agreement. This does not presuppose any particular outcome, but it does require an employer to engage in a serious process of negotiating in an effort to reach a settlement.

Restrictions on industrial action.

- **Restrictions on industrial action.** To counterbalance the legal status granted to trade unions and the duty imposed on employers to bargain in good faith, Canadian legislatures, including Parliament, imposed restrictions on the use of economic weapons as a means of achieving collective bargaining goals. In the federal jurisdiction as well as elsewhere, these restrictions include provisions which prohibit strikes during the life of a collective agreement and require the use of a grievance adjudication mechanism instead. Between collective agreements, the legislation limits the use of the weapons of strike and lock-out by such means as mandatory strike votes, and requirements to use mediation or other kinds of dispute resolution prior to or instead of strikes and lock-outs.

Duty of fair representation.

- **Duty of fair representation.** Under Canadian collective bargaining legislation, trade unions are given exclusive representational rights on the basis of majority support in a defined unit of employees. To ensure that these representational rights are exercised in an even-handed way for all workers in the bargaining unit, the legislation imposes on unions a duty to represent all employees in a manner which is not discriminatory, arbitrary or in bad faith. This does not prevent a trade union from making a judgment which puts an employee or group of employees at a relative disadvantage, as long as the decision is reached in a way which does not unfairly or routinely ignore the interests of any employees in the bargaining unit.

> The certification system in North America, with its pattern of certification by establishment, differs from the European system, where the norm is sectoral, multi-employer negotiations, whether on the national or regional levels.
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> Gregor Murray and Pierre Verge. (1999). *La représentation syndicale : Visage juridique actuel et future.* Quoted in France Saint-Laurent. (2002). *Research into the Obligation to Maintain Pay Equity.* Unpublished paper commissioned by the Pay Equity Task Force, p. 2.

High degree of decentralization.

One of the striking features of the collective bargaining system which has emerged under this legislation is its high degree of decentralization. To begin with, collective bargaining is conceptualized as replacing individual contracts of employment with a different kind of contractual relationship between one employer and employees. With the exception of some specialized industrial settings, such as construction, there has been little support in policy or legislation for bargaining structures which involve more than one employer or more than one union. The legislation was formulated in a North American climate where there was virtually no tradition of government co-ordination or regulation of economic enterprise; despite the increased role of publicly directed enterprise and the extension of collective bargaining to public employees, the prototype of the autonomous employer has continued to be the assumed norm for the purposes of collective bargaining legislation.

Preventing fragmentation of working relationships.

The primary concern of labour relations boards in defining appropriate bargaining units has been to establish viable and vigorous collective bargaining relationships. As an ideal, labour relations boards have often expressed a preference for a bargaining unit which would include all of the employees of a single employer.[5] The rationale for this preference is that it would, on the one hand, allow the creation of unions with strong support and resources and, on the other hand, prevent fragmentation of organizational structures and working relationships.

Community of interest.

In actual fact, the definition of most bargaining units has deviated from this pattern. Labour relations boards have been reluctant to refuse groups of employees an opportunity to exercise their right to seek access to collective bargaining if the unit they propose, though not ideal, does provide an adequate foundation for a bargaining relationship. These tribunals have also recognized that a strong "community of interest" among employees in terms of their geographic location, the basis on which they are paid, the kind of work they do, and other shared characteristics, can be important in creating a viable relationship.

Canada – general premise of collective bargaining.

The general premise of collective bargaining legislation in Canada is thus that bargaining will be carried on at the level of a single employer. In reality, because of the recognition of the legitimacy of smaller bargaining units on the basis of the wishes of employees or the factor of community of interest, there are relatively few bargaining units which are really "all-employee" units. Most bargaining units do not include all of the employer's employees. There may be other bargaining units in the workplace, or there may be employees who do not have access to collective bargaining. It is fairly typical, for example, for the production employees of an employer to be represented by one or more unions, while clerical, administrative, sales and information technology employees are not.

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[5] For instance, see *Insurance Corporation of British Columbia and Canadian Union of Public Employees*, [1974] 1 Can. L.R.B.R. 403.

Numerous bargaining units.

Though labour relations boards have tried to avoid undue fragmentation, collective bargaining in Canada is still characterized by numerous bargaining units where a trade union bargains on behalf of a subset of the employees of one employer, separately from, or even in competition with other employees or their trade unions.

Collective bargaining – important effect for women.

Access to collective bargaining has had an important effect for women, as it has for men, in raising wages. The decentralized nature of collective bargaining, however, and the continuing significance of the "community of interest" criterion in defining bargaining units, appears in some sense to have reinforced occupational segregation for women. One study of a sample of Ontario collective agreements covering 200 or more workers concluded that more than two thirds of unionized women would have to change jobs to eliminate occupational segregation; this was roughly the same scale of change which would be required across the economy as a whole.[6]

Occupational segregation.

Study of the effects of collective bargaining has drawn attention to the decrease in wage disparity within groups of unionized workers, as well as the fact that personal factors such as educational qualifications and labour market experience have less of an impact on wage levels.[7] The emphasis on reducing differentiation between employees has generally been to the benefit of disadvantaged workers,[8] and it might be expected that it would have a positive effect for women. In the case of women, however, this effect seems to be counteracted by the high degree of occupational segregation, which is manifested in the unionized sector by membership in different bargaining units.[9]

The legislation which governs collective bargaining in Canada may be said to mandate a process rather than an outcome. These statutes give legal legitimacy to trade unions and set out the rules for the bargaining process. They do not as a rule require the parties to negotiate about any particular subject, or to come to an agreement about anything, although the parties must be making sincere efforts to reach an agreement.

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[6] Janet Currie and Richard Chaykowski. (1995). "Male Jobs, Female Jobs and Gender Gaps in Benefits Coverage in Canada". In Solomon W. Polachek (Ed.), *Research in Labor Economics*, Vol. 14. Greenwich, Conn. and London: JAI Press, pp. 171-210.

[7] Dwayne Benjamin, Morley Gunderson and W. Craig Riddell. (1998). *Labour Market Economics: Theory, Evidence and Policy in Canada* (4th ed.). Toronto: McGraw-Hill Ryerson.

[8] Richard Chaykowski and George A. Slotsve, (1999), "Unions, Inequality and the Distribution of Income in Canada: Evidence from the 1994 Survey of Labour and Income Dynamics," *Workplace Gazette*, Vol. 2, No. 4. pp. 85-99; and L.N. Christofides and R. Swindinsky, (1994), "Wage Determination by Gender and Visible Minority Status: Evidence from the 1989 LMAS," *Canadian Public Policy – Analyse des Politiques*, Vol. 20, No. 1, pp. 34-51.

[9] Anne Forrest, *supra*, note 1, p. 16.

"Free" collective bargaining

This model is sometimes characterized as "free" collective bargaining, because of the latitude given to the parties to shape the course and content of their negotiations, and because they are permitted, under certain conditions, to engage in a test of economic wills against each other. Through this process, the parties are able to define the issues and to signify to each other what costs they are willing to incur to attain their bargaining objectives.[10]

Yet it is certainly an overstatement to describe collective bargaining as an institution in which the parties are, in the end, constrained only by the degree to which they are prepared to take heavy economic risks to attain their bargaining objectives. As Anne Forrest observes:

> Even a more modest definition of free collective bargaining—that is, free within the legal constraints established in the immediate post-1945 era—would not hold. There has been considerable change and tightening of the rules over the years, largely in response to labour unrest. Union militancy and perceived threats to economic stability have been used to justify significant new constraints on the collective bargaining process, including wage controls in both the public and private sectors. The right to strike has been particularly vulnerable to regulation. The extent of this intervention and its implications are considered at length by Panitch and Swartz (1993), who conclude that collective bargaining in Canada is dangerously unfree.
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> Anne Forrest. (2003). *After the Pay Equity Award: Can Collective Bargaining Maintain Equal Pay for Work of Equal Value?* Unpublished research paper commissioned by the Pay Equity Task Force, p. 31.

Collective bargaining is constrained.

Collective bargaining is, in fact, constrained by a variety of limitations which are grounded in economic and political policy decisions made by governments. In addition to the restrictions on industrial action mentioned in the passage above, the parties are required to bargain within boundaries set by legislation concerning labour standards, occupational health and safety, human rights or anti-inflation policies. It is not open to them to arrive at an agreement which is inconsistent with these manifestations of public policy.

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[10] Paul Weiler. (2002). Presentation to the Pay Equity Task Force, June 28, 2002.

> Labour law and policy have always been shaped by economic and social considerations well beyond the needs and concerns of labour and management. If pay equity is now an important public policy, there is no philosophical reason why this objective should not influence collective bargaining policies and structures.
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> Anne Forrest. (2003). *After the Pay Equity Award: Can Collective Bargaining Maintain Equal Pay for Work of Equal Value?* Unpublished research paper commissioned by the Pay Equity Task Force, p. 32.

Collective Bargaining in the Federal Jurisdiction

Gradual decline in unionization rates.

There has been a gradual decline in the rates of unionization in Canada over the past two decades, going from a rate of a little over 36 percent in 1985 to marginally over 32 percent in 1999.[11] This decline has not been steady; the International Labour Organization reported in 1997 that the rate of unionization in Canada had actually increased by 1.8 percent between 1985 and 1995.[12]

In the federal jurisdiction, the rate is slightly higher than the rate in any of the provinces. The unionization rate outside the Public Service is around 50 percent; as the rate of unionization in the Public Service itself is very high, this rate would be increased if it were to be included.

There are many non-unionized employment relationships in the federal jurisdiction, and some important industries, notably banking, have not been affected by collective bargaining to any significant extent. Nonetheless, collective bargaining has an important impact in the federal jurisdiction, and discussion of new pay equity legislation would have to take into account the structures and practices of collective bargaining.

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[11] Richard Chaykowski. (2002). *Achieving Pay Equity under a Transformed Industrial and Employment Relations System.* Unpublished research paper commissioned by the Pay Equity Task Force. p. 11.

[12] International Labour Organization (ILO). (1997). *ILO Highlights Global Challenges to Trade Unions.* ILO press release, November 4, 1997.

Federal Public Service

Federal Public Service is unique.

In Chapters 1 and 7, we have described some of the complexities of the employment relationship between Treasury Board and the employees in the federal Public Service. Though there are a number of employers within the federal jurisdiction with a large and diverse workforce, the federal Public Service is unique in terms of the variety of work performed and the number of employees, as noted by Renaud Paquet and Jacques-André Lequin:

> This is not, then, what sets the federal public sector apart. Rather, what distinguishes the public sector is its complexity in relation to its size, as compared with other organizations in the federal jurisdiction, and the complexity of its labour relations structure.
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> Renaud Paquet and Jacques-André Lequin. (2003). *Interrelations between Labour Relations Processes and Pay Equity: The Specific Case of the Public Service.* Unpublished research paper commissioned by the Pay Equity Task Force, p. 3.

The employees in the Public Service—over 200,000 in number—are represented by a total of 17 bargaining agents. In some cases, the bargaining agent represents employees from a large number of occupational groups at a single bargaining table. In other cases, there are separate collective agreements for a smaller and more tightly related grouping of job classifications.[13]

Public Service Staff Relations Act.

The particular labour relations features of the federal Public Service are addressed in a specialized statute, the *Public Service Staff Relations Act,* which describes an integrated regime for dealing with the unique characteristics of this bargaining environment.[14]

Collective Bargaining and Pay Equity

The research and opinions which are available to us disclose two alternative positions with respect to the appropriate relationship between collective bargaining and the process for achieving pay equity.

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[13] Renaud Paquet and Jacques-André Lequin. (2003). *Interrelations between Labour Relations Processes and Pay Equity: The Specific Case of the Public Service.* Unpublished research paper commissioned by the Pay Equity Task Force, p. 4.

[14] It is important to note the potential changes to this regime which may come about as a result of the *Public Service Modernization Act* passed in November 2003.

The first of these is the position that the mechanisms put in place for achieving pay equity should line up as closely as possible with the existing bargaining structure. The collective bargaining relationship between a trade union representing employees and an employer is the basis for a dynamic and organic process by which the aspirations of the employees and the resources of the employer are analysed and brought into some kind of proportion which both parties find acceptable. The process is affected by the market and by the bargaining strength of the parties, and also by the trade-offs they wish to make and the priorities they set.

According to this view, the resolution of the wage issues associated with pay equity outside the framework of this process would undermine collective bargaining. It would give employees a means not constrained by the discipline of the bargaining process to attain wage gains, and thus place an additional burden on employers. Pointing to pay equity legislation which requires that the wages of all employees be subjected to pay equity analysis, those who support this alternative argue that this permits employees who have made the choice not to be represented by a union, or who have chosen a union which does not deploy economic weapons as a means of achieving bargaining goals, to gain the benefit of wage adjustments without putting in the effort and incurring the costs, financial and otherwise, which collective bargaining may entail.[15]

Structure of collective bargaining in Canada.

The process of collective bargaining just described depends, in the Canadian context, on a particular structure. The characteristics of that structure are defined by the configuration of the bargaining unit or units of employees which a labour relations board has declared to be the appropriate basis for establishing a collective bargaining relationship with the employer. The terms and conditions of employment for the employees in the bargaining unit are the subject matter of bargaining between the employer and the trade union certified to represent bargaining unit employees. Those who argue for the position we are outlining here not only view the collective bargaining process as the preferred means for achieving pay equity, but see the structure based on the bargaining unit as the most functional basis for conducting pay equity comparisons.

Canadian Human Rights Tribunal – meaning of "establishment."

In the case of *Canadian Union of Public Employees* v. *Canadian Airlines International/Air Canada*,[16] the Canadian Human Rights Tribunal, as we have seen, concluded that the individual bargaining units were the "establishment" which best satisfied the test set out in section 10 of the *Equal Wages Guidelines, 1986* as representing an administrative entity with common wage and personnel policies. In approving this decision, Paul Weiler noted that the Tribunal had stressed the functionality of making pay equity comparisons within the unit covered by a single collective agreement:

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[15] Paul Weiler, *supra*, note 10; Mark Killingsworth, *Reforming Equal Pay for Work of Equal Value*, submission to Pay Equity Task Force, February 2003.

[16] *Canadian Union of Public Employees* v. *Canadian Airlines International/Air Canada* (1998), 34 C.H.R.R. D/442 (C.H.R.T.).

> In my view the Canadian Human Rights Tribunal reached the correct legal conclusion, notwithstanding any potential concern that it would prevent a largely female group of employees from finding a largely male group of employees with which to compare the value of their jobs. In reaching this conclusion, the Tribunal relied on its findings that, on the facts of the case, the different collective agreements applicable to each bargaining unit established different wage and personnel policies for each. Since these "collective agreements and bargaining units [...] are the primary mechanism by which unionized employees determine their wages and working conditions in bargaining with their employers," this prevented "the creation of a single establishment comprising the pilots, flight attendants and technical operations at Air Canada and Canadian Airlines."
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> Paul Weiler. Presentation to the Pay Equity Task Force, June 2002, p. 12.

Argument: separating pay equity from the bargaining process causes a distortion.

The position taken by Weiler and others is thus that considering pay equity issues separately from the bargaining process would threaten the integrity of collective bargaining, and would distort the impact of an important means by which employees influence the terms and conditions under which they work. They also argue that the structure of bargaining units on which the bargaining process is based represents the most functional framework for the consideration of pay equity questions.

> Where collective bargaining takes place between an employer and differing unions, the bargaining power, philosophy and dynamics of unions, as well as tradeoffs made in any collective bargaining relationship make it very unreliable and misleading, if not impossible, to compare the contrasting bargaining results, and unfair to attribute the responsibility to the employer alone. It would also be a misdirection of public policy and of enforcement efforts to ignore the legal and practical realities that wages are set at the bargaining unit level for unionized employees. A functional approach which recognizes these realities is the one best suited for any equal pay or pay equity statute affecting unionized employees, whether or not employees have chosen to organize themselves into one or several bargaining units at an employer.
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> Paul Weiler. Presentation to the Pay Equity Task Force, June 2002, pp. 15-16.

Alternative position.

The alternative position is that the pay equity process by which jobs are assessed and wage adjustments made should be conducted outside the framework of collective bargaining. With respect to the process, the main rationale for this position is precisely that the process of give and take which characterizes collective bargaining is an inappropriate vehicle for dealing with the fundamental rights of workers. The emphasis in collective bargaining is on reaching a "deal" which is acceptable to the parties, and in this process the trade union or the employer may compromise its objectives, or even abandon them, in the interest of reaching agreement. Where the objective sought by certain employees concerns a fundamental right, supporters of this position would argue that these employees should not be asked to place this right on the table along with all the other items that are being negotiated.[17]

Pay equity – more appropriately characterized as human rights legislation.

The model we have proposed in this report is based on the premise that pay equity legislation is more appropriately characterized as human rights legislation than as labour legislation. Though the setting of wages is an industrial relations matter, and negotiation of compensation has been central to the institution of collective bargaining, the issue which lies at the heart of any discussion of pay equity is whether there has been discrimination on the basis of gender in the wage-setting process.

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[17] Paquet and Lequin, *supra,* note 13.

It is our view that the process of collective bargaining as it has evolved in Canadian workplaces is not the best means of ensuring that human rights principles are respected. The accommodations and compromises which are inherent in the bargaining process are an important means by which collective bargaining partners forge agreements about the terms which will guide their life together, but this ethic of compromise does not constitute an appropriate approach to fundamental human rights.

This second alternative also involves a critique of the structure on which the collective bargaining system is based.

In part, the argument that the resolution of pay equity issues should be made within the framework of collective bargaining relationships is based on the important role played by unions in improving the terms and conditions of employment of the workers they represent. There is some force to the argument that trade unions are in a good position to assess the priority which should be given to the issues facing their members, and to formulate a bargaining strategy which will give appropriate weight to those interests in arriving at an ultimate agreement.

Some unions successful in reaching pay equity agreements.

In this context, there are examples of trade unions placing pay equity on their bargaining agenda, and of success in reaching agreement on a pay equity process. The number of collective agreements which contain such provisions has risen steadily since 1986.[18] In the federal jurisdiction, there have been some cases in which trade unions have been successful in reaching a pay equity settlement on behalf of their members, and trade unions, acting for the employees in their bargaining units, have been largely responsible for any gains made by workers through litigation under section 11 of the *Canadian Human Rights Act.*

Bargaining structure and stereotypes about women's work.

Nonetheless, to use the existing bargaining structure as the basis for a new pay equity statute would be to assume that the structure itself does not reflect stereotypes about women's work and that it is capable of producing gender-neutral wage patterns in the workplace. As we have seen, the way in which bargaining units are demarcated does not use criteria which would foster comprehensive workplace policies, or insist on inclusiveness as a basis for certification. Without denying that bargaining units may be the basis for a workable relationship with an employer and may give employees within the unit a higher degree of influence over the terms and conditions under which they work, one is still driven to conclude that labour relations boards have not felt it to be part of their mandate to intervene in order to modify the factors which have traditionally inhibited union organization and militancy among women workers. They have seen it to be their role, appropriately enough, to vindicate the wishes of workers who choose to exercise their right to associate and organize, as long as the bargaining unit they propose makes some sense as a viable basis for collective bargaining. They do not consider that their role is primarily one of ameliorating the general situation of workers, or of protecting human rights for all of those in the workplace.

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[18] Anne Forrest, *supra,* note 1.

Foundation not gender inclusive.

Even in unionized workplaces, there is a considerable degree of occupational segregation for women. This may be reflected in the definitions of bargaining units, and also in the relatively weaker economic influence available to those trade unions which represent bargaining units with a high proportion of women workers. It is our view that establishing bargaining units and collective agreements as the entity which will be the basis for pay equity comparisons and discussions would be to build on a foundation which is not in itself gender inclusive.

If the kind of gender segregation which appears in the organized workforce seems a clear reason to reject the use of the bargaining unit as the entity on which the pay equity process will be based, the situation of workers who do not have access to collective bargaining casts further doubt on the suitability of this choice. It would, of course, be possible to devise some kind of proxy for the collective bargaining relationship in the case of non-unionized workers, and to address the issue of pay equity for these workers on this basis.

Not suitable for non-unionized workers.

It is our view, however, that a pay equity legislative scheme based on the bargaining unit where there is a certification order in place would create a template for dealing with pay equity issues which would not be completely suitable for non-unionized workers. We have suggested that women in bargaining units which are more heavily female tend to be at a disadvantage in the collective bargaining process, even though they do have union representation. Non-unionized women are at even more of a disadvantage, since no one has legal status to speak on their behalf, let alone make use of economic pressure to exert influence on an employer.

In theory, employees are free to choose whether to be represented by a trade union and to select what bargaining agent will represent them. This premise may be open to debate, but it is the basis on which labour relations boards make decisions concerning the legitimization of collective bargaining relationships. If employees have the right to opt for trade union representation, they have an equal right to decide that they do not want this kind of representation in their dealings with their employer, and nothing in collective bargaining law places any obligation on an employer to deal with them collectively under these circumstances.

Human rights are fundamental and universal.

Human rights legislation, however, states that these rights are fundamental and universal. This, in our view, means that any legislative regime which is intended to advance these rights should not incorporate distinctions which reproduce or reinforce disadvantage.

Pay equity legislation should not privilege collective bargaining relationships.

We are of the opinion that the system which is established under the new pay equity legislation should not privilege collective bargaining relationships, or unnecessarily restrict the range of comparisons which can be used as part of the process for achieving pay equity. While there may be circumstances in which the bargaining unit and the bargaining relationship provide the best framework within which to carry out pay equity analysis, we do not think it should be assumed that this is always the case.

Pay equity unit.

We indicated in Chapter 6 that we favour defining the pay equity unit in a way which would not necessarily, or even normally, be coterminous with bargaining units as set out in certification orders. In our view, the configuration of bargaining units as they now exist cannot be relied on to provide a sound basis for conducting the unbiased examination of compensation patterns which is necessary for the elimination of wage discrimination.

With respect to collective bargaining as a process, we think it is important that the pay equity issue not be approached through the accommodative conventions which have characterized collective bargaining, but through a separate process which will permit a focus on pay equity as an issue of the removal of discrimination.

16.1 The Task Force recommends that the new federal pay equity legislation provide that the process for achieving pay equity be separated from the process for negotiating collective agreements.

Responsibility of the Employer

Unfair burden.

One of the arguments made by those who support basing the pay equity process on bargaining units is that the alternative we recommend places an unfair burden on employers because it requires them to engage in a distinct process designed to achieve pay equity when they are already under a clear legal responsibility to engage in collective bargaining with trade unions representing their employees.

Obligation not to discriminate.

It should not be forgotten, however, that employers also have an obligation under section 11 of the *Canadian Human Rights Act* not to discriminate against their female employees with respect to their wage-setting practices. In the case of *British Columbia (Public Service Employee Relations Commission)* v. *British Columbia Government and Service Employees Union* ("the Meiorin case"),[19] the Supreme Court of Canada discussed the expectations which rest on employers in relation to human rights legislation. The decision dealt with the duty of employers to accommodate employees with special characteristics—in that case, gender—in order to avoid discrimination. The Court concluded that an employer must take steps to formulate and establish non-discriminatory standards for hiring, and not simply respond to the particular circumstances surrounding a particular kind of candidate. The onus is on the employer to demonstrate that the standards adopted are necessary to the selection process, and that they have been carefully scrutinized for discriminatory bias.

Meiorin decision.

The Meiorin decision arose in the context of the duty to accommodate, but it signals a clear development in the thinking of the Supreme Court of Canada about the nature of an employer's responsibility to eliminate discrimination from the workplace. The principles enunciated by the Court apply to the issue of pay equity as well as to other equity questions. In our view, these principles would preclude permitting the boundaries established in certification orders to mask discriminatory wage practices, or to prevent female employees from having opportunities to examine their wages in comparison to a reasonable range of male jobs.

The implications of this decision have been described as follows:

> Ultimately, then, equality jurisprudence under both the Charter and human rights legislation has evolved to adopt an expressly transformative model. In doing so, the jurisprudence

Imposes proactive obligations on governments and employers.

> a) imposes upon governments a proactive obligation to design legislation taking into account and accommodating the needs, capacities and circumstances of disadvantaged groups that will be affected by the law, thereby "fine-tuning" mainstream institutions and relations to ensure full participation and enjoyment of rights by all members of society; and

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[19] *Public Service Employee Relations Commission* v. *British Columbia Government and Service Employees Union* ("Meiorin case"), [1999] 3 S.C.R. 3.

b) imposes upon employers the proactive obligation to transform discriminatory workplace practices and norms to achieve genuine inclusiveness for all the diverse groups of which our society is composed.[20]

Since the enactment of human rights legislation in the 1970s, there has been considerable development in understanding what kind of responsibility an employer has to recognize and promote equality, and to eliminate discrimination in the workplace. This has come about through judicial decisions like Meiorin, through the work of researchers and commentators, and also through the dialogue between employers, their employees and trade unions. In light of this evolution, as we have indicated in Chapter 5 we think it is reasonable to expect an employer to take a broad view of the enterprise, to be alert to the possibility that existing practices may be discriminatory in effect, and to be imaginative in devising ways of identifying and eliminating discrimination.

Responsibility of Trade Unions

We have said that we do not think that collective bargaining relationships should be, in a direct sense, the framework in which the pay equity process is carried out. This does not mean that a collective bargaining relationship is irrelevant to the achievement of pay equity, or that trade unions should have no role in the process which leads to this goal.

Unions have taken a leading role in advancing the interests of employees.

As we have pointed out, trade unions have taken a leading role in advancing the interests of the employees they represent, and they have often made significant efforts to initiate discussion of discrimination, and to push for terms and conditions of employment which will promote equality. As representatives of employees, they have in many cases exerted a noticeable influence on the formulation of workplace policies, and have invested heavily in human rights litigation on behalf of female workers and others.

Unions can play an important role.

As we have indicated in our discussion of worker participation, we think that trade unions can play an important role under pay equity legislation. Their experience in representing the interests of workers equips them to examine issues which relate to terms and conditions of employment, and to discuss these issues vigorously with employer representatives. Indeed, it is our view that the legislation should specify that, where there are unionized employees in the workplace, the trade union or unions representing those employees should be a vehicle for the selection of representatives of unionized workers in the pay equity process and for the dissemination of information about pay equity issues. We have discussed the mechanisms for employee participation in the pay equity process more thoroughly in Chapter 8.

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[20] Mary Cornish, Elizabeth Shilton and Fay Faraday. (2002). *International Commitments and Domestic Obligations to Ensure Pay Equity: Obligations to Design an Effective, Enforceable and Proactive Federal Pay Equity Law.* Unpublished research paper commissioned by the Pay Equity Task Force, p. 38.

Unions should be partners in pay equity process.

Though trade unions should function as partners in the pay equity process, we do not mean to suggest that their position mirrors that of the employer, or that they have the same kind of responsibility. The relationship between employers and trade unions is not a symmetrical one. Collective bargaining legislation places unions in a legal position from which they can confidently speak on behalf of employees and press their interests. Nonetheless, they do not enjoy completely equal bargaining power with the employer. There are many decisions concerning corporate direction, organization of work, and allocation of resources over which a trade union has relatively little influence.

All the same, in the discussion of human rights issues over the past quarter-century, a picture has emerged of the role of trade unions which attributes to them an important kind of responsibility, and which requires them to choose bargaining priorities and make other judgments in accordance with human rights principles.

Human rights tribunals and labour arbitrators, as well as the courts, have for some time been elaborating the principles associated with the duty to accommodate employees who are members of a group protected by human rights legislation, and for whom the ordinary rules or structures of the workplace are not suitable. These adjudicators have required that employers examine their workplace facilities and practices carefully to ascertain whether protected employees could be accommodated by making reasonable modifications to the existing situation.

In *Central Okanagan School District No. 23* v. *Renaud,*[21] the Supreme Court of Canada considered what responsibility the trade union might have in relation to the duty to accommodate. The Court said:

> First, [the union] may cause or contribute to the discrimination in the first instance by participating in the formulation of the work rule that has the

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[21] *Central Okanagan School District No. 23* v. *Renaud,* [1992] 2 S.C.R. 970. The case involved rules governing the assignment of work to employees; the complainant was a Seventh Day Adventist who was asking to have his work schedule modified to permit his religious observance. See also *United Food and Commercial Workers, Local 401* v. *Alberta Human Rights and Citizenship Commission,* 2003 ABCA 246.

> discriminatory effect on the complainant. This will generally be the case if the rule is a provision in the collective agreement. It has to be assumed that all provisions are formulated jointly by the parties and that they bear responsibility equally for their effect on employees.
>
> [...] Second, a union may be liable for failure to accommodate the religious beliefs of an employee notwithstanding that it did not participate in the formulation or application of a discriminatory rule or practice. This may occur if the union impedes the reasonable efforts of an employer to accommodate. In this situation it will be known that some condition of employment is operating in a manner that discriminates on religious grounds against an employee and the employer is seeking to remove or alleviate the discriminatory effect. If reasonable accommodation is only possible with the union's co-operation and the union blocks the employer's efforts to remove or alleviate the discriminatory effect, it becomes a party to the discrimination.

Unions not innocent bystanders.

Though the Renaud case focuses on the duty to accommodate, the conclusion of the Court that trade unions cannot be viewed entirely as innocent bystanders applies to all types of workplace discrimination.

It is not that the trade union's responsibility is exactly the same as the employer's. Although the union may influence the management of the workplace, the employer has a capacity to make major corporate decisions, to organize and direct work, and to allocate resources that the union does not. This is why the primary obligation set out in human rights legislation rests on the employer.

Unions must ensure their actions do not perpetuate discriminatory practices.

The responsibility of trade unions in relation to human rights is somewhat different than that of the employer, as the above-quoted passage from Renaud indicates. The principles which have been developed to describe the nature of the obligation which an employer has to prevent and eliminate discrimination can be applied to trade unions, taking into account the distinct role which unions play in the workplace. This framework includes the comments made in the Meiorin decision,[22] which make it clear that the responsibility for eliminating workplace discrimination is proactive and requires workplace decision-makers to examine their decisions for possible discrimination, and to take steps to prevent or eliminate it. The responsibility of unions in this respect is not equivalent to that of employers, but our conclusion from these legal developments is that, insofar as unions are involved in decision-making processes in the workplace, it is incumbent on them to ensure that their actions are not perpetuating discriminatory practices or preventing their abolition.

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[22] Meiorin case, *supra*, note 19.

Duty of Fair Representation

As we have seen, one of the developments which accompanied the implementation of the Canadian model of collective bargaining law was the idea that trade unions should have an obligation to represent fairly all of the employees in a bargaining unit in recognition of their legal status as exclusive representative of those employees.

Canada Labour Code, Part I.

The duty of fair representation was developed initially as a common law doctrine, but has now been incorporated in collective bargaining legislation. The formulation of the duty varies somewhat in the statutes of different jurisdictions. The following section describes the duty of fair representation in Part I of the *Canada Labour Code:*

> 37. A trade union or representative of a trade union that is the bargaining agent for a bargaining unit shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the employees in the unit with respect to their rights under the collective agreement that is applicable to them.

Public Service Staff Relations Act.

In the *Public Service Staff Relations Act,* the duty of fair representation is captured in section 10(2):

> 10.(2) No employee organization, or officer or representative of an employee organization, that is the bargaining agent for a bargaining unit shall act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any employee in the unit.

Extensive development in jurisprudence.

There has been extensive development in the jurisprudence of labour relations boards concerning this idea that unions must make decisions and set priorities in a way which gives equal treatment to all the employees they represent. There is a recognition that the choices which unions make may have a negative impact on individual employees or groups of employees, and that they must consider the interests of all employees in making these judgments.

Much of this jurisprudence[23] has concerned issues of the administration of the collective agreement, and has involved questions such as whether the union is obliged to proceed with grievances on behalf of individual employees. It has been suggested that the duty of fair representation does not apply to bargaining issues.[24] Section 37 of Part I of the *Canada Labour Code,* reproduced above, certainly lends itself to this interpretation, as the obligation is framed specifically in terms of the rights of employees under the collective agreement.

Restrictions on the extent of duty of fair representation.

On the other hand, it should be remembered that the duty of fair representation was a response in the first instance to the refusal of trade unions to bargain on behalf of black bargaining unit employees.[25] For whatever reason, some Canadian legislatures have placed restrictions on the extent of the duty, and this seems to be the case with the *Canada Labour Code.* In the case of provisions like section 10 of the *Public Service Staff Relations Act,* however, it is difficult to see why it could not be interpreted to impose a duty on unions with respect to bargaining issues.

Duty of fair representation – broader interpretation.

Under this broader interpretation, the duty of fair representation would require unions to represent employees fairly, not only when they are deciding how to deal with the claims of individual employees or groups of employees in respect of the interpretation and application of the collective agreement, but when they are setting bargaining priorities and negotiating with employees about the terms and conditions which should go into the collective agreement or other workplace accords.

Duty of fair representation and human rights.

There have been some efforts by labour relations boards to articulate the place of the duty of fair representation in the evolving framework of human rights principles.[26] The duty of fair representation was founded on the rationale that unions should be required to give fair consideration to the interests of all the employees they represent, given the dependence of those employees on the assistance of trade unions in advancing those interests. This principle seems equally well suited to describing how unions should approach human rights questions which arise in relation to the employees they represent.

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[23] For a review of this jurisprudence, see France Saint-Laurent. (2002). *Pay Equity: Research into the Obligation to Maintain Pay Equity.* Unpublished research paper commissioned by the Pay Equity Task Force.

[24] Anne Forrest, *supra,* note 1.

[25] *Steele* v. *Louisville & Nashville Railroad Co.*, 323 U.S. 192 (1944).

[26] See *K.H.* v. *Communications, Energy and Paperworkers Union and SaskTel,* [1997] S.L.R.B.D. 476, a decision which involved the responsibility of the union to adapt its grievance handling to accommodate a mentally disordered employee.

An adaptation of the duty of fair representation in this way does not contemplate that a union can itself guarantee that the human rights of employees will be vindicated and, in this sense, the term "joint liability" which is sometimes used to characterize the position of the union is not accurate. Rather, this approach envisions that the union will ensure that its own actions and choices do not perpetuate or engender discrimination. Indeed, human rights are unlike many of the issues which are scrutinized by reference to the duty of fair representation. These issues not only demand that unions weigh them in comparison to other issues, but that unions also take positive steps to ensure that human rights are respected when other issues are negotiated, and that they are not traded off to achieve other goals.

Responsibility to Other Employees

The duty of fair representation helps to describe the responsibility of trade unions towards the bargaining unit employees they represent. Earlier in this chapter, we talked about how pay equity legislation is challenged in situations where there is more than one bargaining unit, or where groups of employees of an employer do not have trade union representation.

The legal responsibility of a trade union is to represent the members of the bargaining unit for which they are certified. The mandate of a trade union does not, in this context, extend to the promotion of the interests of all employees in the workplace. In the case of most of the issues which are the subject of negotiation with employers, there is no expectation that unions will set their bargaining strategy in response to the aspirations of groups of employees outside the bargaining unit, or to the bargaining goals of other trade unions.

This general proposition about the nature of collective bargaining, which we discussed earlier, can be used as the basis for the argument that it is unrealistic for pay equity legislation to try to place restrictions on the capacity of trade unions to pursue the interests of their members without regard to the implications of their negotiations for other groups of employees.

As we have seen, the picture of collective bargaining as an unrestrained exercise of countervailing economic power between an employer and a certified trade union is not completely accurate, when one takes into account the numerous caveats which have been placed on this process as a matter of public policy. Trade unions, like employers, and like other citizens, are not permitted to pursue their goals without regard to a number of restraints which have been instituted by legislatures to reflect social and economic objectives which are broader than those of particular employees represented by a single trade union.

Primacy of human rights.

One of these restraints originates in the primacy which has been accorded to human rights in political and judicial processes in Canada over the last several decades. We do not think that trade unions and the interests they represent have been or should be excused from having to take into account the implications of their actions for the equality rights of others, or from examining their decisions to determine whether they will have a discriminatory impact.

We do not mean to suggest that trade unions should have a direct responsibility to achieve pay equity for employees they do not represent or that they should be required to invest the resources of their own members in providing advocacy for employees outside the boundaries of their bargaining units. What we are suggesting is that it is reasonable to expect trade unions to effect the representation of their members in a way which will not be deleterious to the equity interests of others.

We have proposed mechanisms for employee participation in the pay equity process which would require unions to collaborate with other unions and with the representatives of non-unionized workers. This does not mean that unions will be required to provide all of the representational expertise and effort for unionized and non-unionized employees alike. In the model we are recommending, all of the participants would have adequate support to play the role set out for them in the legislation, and would have access to the assistance of the proposed Canadian Pay Equity Commission and advocacy services whose roles are outlined in Chapter 17.

Example of Occupational Health and Safety

Parallels with occupational health and safety legislation.

There are some important parallels between the model we are proposing and the legislative regime which is in place in many Canadian jurisdictions to address issues of occupational health and safety.

> The evidence regarding the impact of joint health and safety committees on accident rates is limited, but consistent across studies and across countries in finding some positive association between lower injury rates and the presence of (effective) joint committees.
>
> Richard P. Chaykowski. (2002). *Achieving Pay Equity under a Transformed Industrial and Employment Relations System.* Unpublished research paper commissioned by the Pay Equity Task Force, p. 32.

- Like the pay equity model we propose, the legislative scheme which governs the resolution of workplace health and safety issues is aimed at correcting an "outcome deficit"[27] in the workplace. That is, it is intended to devise a means of ensuring that an issue which has been identified as a high priority in terms of public policy is addressed in a more effective way than has been the case under other systems of workplace management or bargaining.
- Occupational health and safety legislation recognizes that the issues covered in the legislation are sufficiently significant to all those in the workplace that they should be dealt with in a way which does not limit the effect of their resolution to employees who are represented by a trade union, but extends this effect to non-unionized employees as well.
- Although the legislation outlines the specific responsibilities of employers, trade unions and individual employees in supporting the goals of the legislation, the employer is primarily responsible for maintaining a safe workplace.
- The mechanisms set out in current health and safety legislation rests on the premise that more effective decisions on these issues will be reached through a process of joint determination.

There are, of course, many differences between the issues which are covered in health and safety legislation and those which are related to the achievement of pay equity. The positive experience of participants in the work of health and safety committees, however, is an illustration of the viability of a structure which is separate from but linked and complementary to the collective bargaining system.

Learning from joint occupational health and safety committees.

Richard Chaykowski has suggested that the lessons learned from experiences under health and safety statutes might be drawn upon in choosing the optimum structure for dealing with pay equity issues:

> Several strengths of the approach to joint occupational health and safety committees apply, nonetheless, to pay equity:
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> - Measures that increase the resources devoted to training and the type of training activity of joint pay equity committee members are likely to improve the effectiveness of their activity;

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[27] Richard Chaykowski, *supra*, note 11, p. 31.

> - Measures that make available resources to broader education and training will support organizational acceptance and hence program success;
> - Union-management joint committees are likely to have a greater degree of success than other (non-joint) compositions;
> - Extending the outcomes of union-management committees to non-unionized segments of an establishment's workforce would extend the benefits of the most effective form of joint committee to all workers (and create a level playing field within establishments). This would require representation from the non-union component of the workforce.
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> Richard P. Chaykowski. (2002). *Achieving Pay Equity under a Transformed Industrial and Employment Relations System.* Unpublished research paper commissioned by the Pay Equity Task Force., pp. 33-34.

Effect of the Proposed Model on the Collective Bargaining Process

Argument: separate process for pay equity may undermine collective bargaining.

It has been argued that the establishment of a process distinct from collective bargaining for the resolution of pay equity issues will undermine collective bargaining and even render it superfluous.[28] By creating a different forum in which wages are assessed and adjusted, the character of collective bargaining as a test of relative economic strength will be altered and the rationale for collective bargaining will be less strong.

We acknowledge that this argument is an important one. It cannot be predicted with certainty what effect the introduction of a separate pay equity process might have on the nature of collective bargaining in a particular workplace.

Unions support separate pay equity process.

On the other hand, collective bargaining has proved to be a resilient and adaptable process. We do not think that the role of a trade union as the voice of a particular group of employees who have chosen it to represent them will be eclipsed by the model we propose. It is, we think, significant that virtually all of the submissions made to us by trade unions and labour organizations supported the separation of the pay equity process from collective bargaining, and that they did not voice concern that this would undermine collective bargaining, a process in which they have a great deal invested and which is their *raison d'être.*

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[28] Paul Weiler, *supra,* note 10; Mark Killingsworth, *supra,* note 15.

As we have pointed out, assertions of public interest through legislation on such matters as labour standards, health and safety, taxation, human rights and unemployment have placed constraints on the degree of freedom which employers and trade unions possess in reaching agreement. The parties to collective bargaining relationships have shown themselves able to recognize the implications of these limitations for the process of negotiation, and to adapt their interactions appropriately.

It is true that setting wages is one of the most important aspects of collective bargaining. In this respect, it has been argued that pay equity legislation which separates the consideration of wage discrimination from the bargaining process constitutes a restraint on the ability of a trade union and an employer to reach agreement freely on wage levels. It is clear, however, that collective bargaining partners conduct their negotiations in a framework which places a variety of restrictions on them, among which is the obligation to respect the human rights of employees. We are not persuaded that the presence of these limitations on the scope of bargaining fundamentally changes the process of collective bargaining, or enervates collective bargaining relationships.

Must demonstrate that collective agreements do not reintroduce wage discrimination.

The effect it will have is to require that the parties to collective bargaining be able to demonstrate that the new collective agreement does not reintroduce discriminatory wage patterns, or assign higher value to certain jobs simply because they are predominantly done by men. Though collective bargaining is not a process which responds exclusively to objective criteria, there is generally some explanation for the components of the agreement reached, and the economic features of collective agreements do generally reflect market pressures of various kinds.

Market forces – acceptable explanation for wage anomalies.

In Chapter 12 of this report, we recommended that market forces continue to be recognized as an acceptable explanation for apparent wage anomalies, though we have also said that we would expect this explanation to be explicitly tied to recruitment and retention issues. This acknowledgment of the impact of the market on the circumstances of employers and on their personnel policies seems to us to provide a basis for defending and explaining changes to wages which come about through collective bargaining.

Conversely, the careful analysis of jobs through the pay equity process may provide the parties to collective bargaining with important information about the relativities of jobs, and with a basis to challenge existing wage patterns.

Pay equity process should be separate.

In the model we have laid out, we are proposing that the process of achieving and maintaining pay equity should be separated from the process for negotiating collective agreements. It is important, nonetheless, to ensure that the pay equity process is linked to the collective bargaining process so that the parties to collective bargaining carry out their responsibilities in a way that protects and promotes the fundamental right of employees to be free from wage discrimination.

There are a number of implications to this proposition, which we have addressed in other chapters of this report. For example, we have recommended in Chapter 11 that the results of the pay equity process be recorded in the collective agreements between bargaining partners. In Chapter 14, we allude to the need to take the requirements of the pay equity legislation into account in negotiating revisions to a collective agreement.

Collective bargaining legislation provides valuable lessons.

The regime which regulates and supports collective bargaining for Canadian workers is, as we have commented, focused on process rather than particular results, and in this respect it differs somewhat from the legislative model we are proposing to address pay equity issues. There are, all the same, valuable lessons to be drawn from the features of the collective bargaining system. As we have seen, one of the key features of collective bargaining legislation is that it imposes an obligation on both trade unions and employers to bargain in good faith. It also requires that employee representatives provide conscientious representation to those whose interests they advocate.

We think that these features of the collective bargaining system could profitably be adopted in the pay equity legislation. We are therefore recommending that all of the participants in the pay equity process be obligated to meet the standard of good faith, and that all employee representatives, including representatives of non-unionized employees, be required to provide conscientious representation.

16.2 The Task Force recommends that the new federal pay equity legislation impose a responsibility on employers, employees and employee representatives to deal in good faith and without discrimination in the course of the pay equity process, including all deliberations of the pay equity committee.

16.3 The Task Force recommends that the new federal pay equity legislation require employee representatives to represent employees fairly, conscientiously and without discrimination in the pay equity process.

Recommendations 16.2 and 16.3

Dissenting recommendation by Professor Marie-Thérèse Chicha, Member, Pay Equity Task Force.

In my opinion, Recommendation 16.2 includes 16.3 and Recommendation 16.3 should be removed. The addition of Recommendation 16.3 suggests that employee representatives shall be subject to a double obligation to represent their members conscientiously and without discrimination.

I therefore recommend removing Recommendation 16.3 and keeping Recommendation 16.2.

Conclusion

Collective bargaining has been, and continues to be a powerful influence in defining the way that Canadian employers and workers interact with one another, and in providing a framework of terms and conditions of employment for many Canadian workers. The choice which workers make to be represented or not by a trade union in their dealing with their employers is one of the hallmarks of a democratic society.

Current collective bargaining regime not adequate to ensure pay equity for all workers.

The legal regime governing collective bargaining has developed in a particular context, and has given rise to a distinctive pattern of relationships. We have argued here that this pattern, which is one of single employers bargaining with unions representing bargaining units which typically contain a particular subset of employees, does not provide the optimal basis for achieving pay equity. The system of collective bargaining which this pattern has produced has been important in advancing the interests of workers in many ways, but it is not, as such, adequate to ensure the protection of the fundamental right of all workers, unionized and non-unionized, to equal pay for work of equal value.

We have therefore recommended that the process put in place to achieve pay equity be separate from the collective bargaining process, and that it not be assumed that the collective bargaining relationship is the best basis for achieving pay equity in any given workplace. To simply replicate the bargaining unit as the basic constituency for considering issues of pay equity carries with it the risk of replicating as well the occupational segregation and obliviousness to the gendered nature of work which is at the heart of the problem of wage discrimination.

This does not mean that collective bargaining should be slighted or eclipsed because a new structure is conceived for the resolution of pay equity issues. Indeed, careful consideration should be given to ways of protecting this important forum for exchange and negotiation between employers and groups of workers united by common characteristics, and dovetailing the pay equity process with the timetables, the conventions and the priorities of collective bargaining relationships. Collective bargaining cannot, however, be allowed to become a means of obscuring gender segregation and discrimination, or a way of reasserting a privileged position once pay equity adjustments have been made in the first instance. Nor can the existence of the clear boundaries established by certification orders and collective bargaining relationships be a good reason to overlook or treat differently the equity claims of those employees who do not fall within these limits.

Collective bargaining supports joint resolution.

Collective bargaining has provided legal protection and support for the development, by employers and workers, of strategies for the joint resolution of issues, and for interchange about the respective interests of the parties. In the framework of these relationships, the parties have honed their skills at joint problem-solving and analysis of issues. Though there are certainly examples of such co-determination in workplaces where the employees are not represented by a trade union, it is more likely to develop where the employees can insist upon it because of the legal position of their representatives.

The skills and strategies which collective bargaining partners have developed are not irrelevant to the resolution of pay equity issues. They provide a resource which can be drawn on in formulating approaches to pay equity analysis and wage adjustment.

Objective of pay equity legislation differs from collective bargaining legislation.

The objective of pay equity legislation, however, differs from the objective of collective bargaining legislation, though these two objectives are certainly related to each other. The goal of achieving pay equity cannot, in our view, be as effectively pursued through existing, traditional bargaining relationships, as it can through a new structure which will place the fundamental right of all women workers at the centre, whether they are represented by a strong trade union, a weak trade union or no trade union at all.

Chapter 17 – Oversight Agencies

Importance of clearly defining pay equity oversight agencies.

Our review of the operation of pay equity legislation in jurisdictions within and beyond Canada suggests to us that one of the most important factors in determining the effectiveness of such legislation is the clear definition and appropriately defined authority of oversight agencies charged with the interpretation, application and enforcement of statutory provisions.

In earlier chapters describing the models of legislation which are in place in Canada and in other places, we have alluded to a wide variety of functions and roles which may be played by oversight agencies. In our view, many of these functions are a useful support to the implementation and maintenance of pay equity systems.

Our observations and recommendations concerning the oversight agencies—which we believe should form part of any reformed legislative scheme for the achievement of pay equity—are based on several important premises, which we think are well founded, based on our consultation process and literature review.

Need for Proactive Oversight

Voluntary system inadequate.

In earlier parts of this report, we have stated our conclusion that the objective of pay equity cannot be attained by relying exclusively on the willingness of employers to move towards this goal on their own initiative.

Resources to assist employers are worthwhile investments.

We are persuaded that resources and efforts put into assisting employers to comply with pay equity goals are a worthwhile investment and that, to a considerable degree, the effectiveness of any comprehensive system to eradicate wage discrimination must depend on these good-faith efforts to advance this goal. A recent review of pay equity legislation in British Columbia concluded, indeed, that encouragement of voluntary effort, based on industry-specific research and education, should be used as an initial strategy for the achievement of pay equity, at least for the present. The model adopted in Britain—contrary to the recommendations of the pay equity review there—was also based on voluntary compliance and self-auditing.

Adjudication and enforcement mechanisms still necessary.

We cannot agree that voluntarism is adequate to support a comprehensive pay equity strategy in the federal jurisdiction. Though we accept that an investment in "front-end" efforts to educate, persuade, advise and assist will be repaid in terms of a higher degree of acceptance by employers and workers, and in terms of widespread efforts to comply, we do not think that a legislative model would be complete without the capacity to adjudicate or mediate disputes, and to enforce the legislation in cases where employers prove unwilling to comply voluntarily.

Importance of Self-Monitoring

Employers must have proper pay equity tools.

Notwithstanding our conclusion that it is necessary for a pay equity regime to include proactive oversight and, when required, coercive capacity, we recognize that it is also necessary to provide employers and other actors in the system with the tools they need to comply with the legislation.

Any legislation relies for much of its effectiveness on the willingness and capacity of citizens to comply with its terms. Even in the most thoroughgoing of police states, dependence on the coercive powers of civil authority cannot guarantee that legal directives will be effective in the absence of an understanding by citizens of their rights and obligations, and of a willingness on their part to make an effort to pursue the policy objectives of laws enacted by their governments.

The current federal legislation lacks clarity.

Many of those with whom we consulted attributed much of their dissatisfaction with the current federal legislation to the combination of uncertainty about the exact nature of their responsibilities and the clumsiness of the regime of sanctions which may be imposed if those responsibilities are not met.

At the same time, we heard that much of the early success of the Ontario Pay Equity Commission in winning acceptance among participants for a sometimes controversial set of goals could be traced to the considerable effort the Commission made to provide advice and assistance so that the parties could carry out the steps necessary to bring them into conformity with the statute.

It was argued before us that, with adequate guidance and support, the parties themselves should be able to create pay equity plans which are based on gender-neutral criteria and that, with such support, these parties should be able to gauge whether they are meeting the goals set out in the statute.

> Guidelines and best practices could be developed to assist employers with implementation and maintenance of gender free compensation systems. Information that is made available could provide an overview of the objectives and the scope of pay equity. [...] In providing best practices, it could assist employers in making decisions about what methodologies work or don't work in specific types of organizations or under differing conditions.
>
> Canadian Bankers Association (CBA). Submission to the Pay Equity Task Force, November 2002, p. 5.

We think this argument draws attention to an important point—that it is imperative in creating an effective pay equity regime to consider how to equip participants with the tools to permit them to defend pay equity rights and carry out the obligations which are contained in the statute.

17.1 The Task Force recommends that the new federal pay equity legislation and the structures which are put in place to administer it attach a high priority to measures which will support compliance with the legislation.

Importance of Resources

Recommendations about the kinds of oversight functions needed in connection with the achievement of pay equity therefore assume that sufficient resources will be provided to support all the functions required.

Many people told us that the failure to provide adequate resources to oversight agencies or the withdrawal of resources would render it highly unlikely that employers, employees or employee organizations would be able to meet the expectations suggested by pay equity legislation. The evidence suggests that, without sufficient assistance, many employers either genuinely will not know that they are obliged to eliminate wage discrimination, or they will not have the information or skills needed to proceed towards this goal.

Sufficient resources for oversight agencies are critical.

In order to function effectively, oversight agencies must have the financial resources required to provide informational and training materials, to communicate through electronic and other means, and to consult broadly. It is, moreover, critical that they have adequate human resources, staff and members who possess the combination of skill, knowledge and experience to assist employers and other actors in the achievement of pay equity, and to make authoritative interpretations of the provisions of the statute.

Resources particularly critical during initial implementation phase.

It will be necessary to ensure that adequate resources are provided to support the achievement of pay equity as long as wage discrimination remains a problem. Above all, it is particularly critical that sufficient resources be provided in the initial phases of implementation of the legislation, so that the maximum number of employers will put pay equity plans in place in the shortest possible time.

17.2 The Task Force recommends that the new federal pay equity legislation provide adequate financial and human resources to oversight agencies to support the achievement of pay equity within a reasonable period of time, and that the government continue to allocate sufficient resources for the administration of pay equity legislation.

Stand-Alone Agencies

Separate and specialized pay equity oversight agencies required.

It will be clear from our description of the proposed model in Chapter 5 that we attach importance to the creation of a separate and specialized structure for addressing issues connected with pay equity.

Under the current federal legislation, the Canadian Human Rights Commission (CHRC) has responsibility for overseeing the administration of all aspects of the *Canadian Human Rights Act* (CHRA),[1] including its pay equity provisions. The CHRC has also been given responsibility for the administration of the *Employment Equity Act* (EEA).[2] There is recourse to the Canadian Human Rights Tribunal (CHRT) if issues under these statutes require adjudication. The consolidation of human rights matters under the supervision of these agencies is based on the premise that there is value in pursuing an integrated and holistic approach to questions of discrimination and human rights:

> Human rights are mutually reinforcing, and their interdependence calls for the consideration, promotion and protection of all rights simultaneously.
>
> Canadian Human Rights Commission (CHRC). Submission to the Pay Equity Task Force, March 2003, p. 2.

In this context, it has been argued that the capacity for the protection of human rights is weakened when particular kinds of discrimination are addressed as separate issues.

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[1] Canada. *Canadian Human Rights Act*, R.S.C. 1985, c. H-6.

[2] Canada. *Employment Equity Act*, R.S.C. 1995, c. 44.

On the other hand, it is clear from our discussions with stakeholders and our review of research in this area that, though pay equity is a means of addressing a particular kind of discrimination, it has characteristics which distinguish it from other strategies for confronting inequality. These characteristics require that those responsible for overseeing the attainment of the objectives of pay equity legislation possess distinctive expertise adequate to deal with the technical and theoretical issues associated with wage discrimination.

Specialized expertise needed to produce innovative and realistic solutions.

Our task is to draw conclusions and to make recommendations about the optimum way of achieving the elimination of wage discrimination. Though we appreciate that this issue is connected with other human rights concerns, we have concluded that the best way of ensuring that pay equity issues are effectively addressed is to create agencies which have this particular problem as their focus, and which can marshal the requisite specialized expertise to devise imaginative and realistic solutions to the questions involved.

17.3 The Task Force recommends that the new federal pay equity legislation provide for specialized stand-alone oversight agencies with a mandate associated exclusively with pay equity.

It is perhaps useful to commence the discussion of options for oversight agencies with a description of the functions which we think should be performed by these bodies,[3] and then to describe the structure of agencies we would recommend.

Public Education, Promotion and Information

> The Canadian Bankers Association (CBA) supports the widely held view expressed by stakeholders during the consultations that education should be a major responsibility of the oversight agency.
>
> Canadian Bankers Association (CBA). Submission to the Pay Equity Task Force, November 2002, p. 5.

Systemic discrimination is hard to discern, so broad public education is necessary.

As is the case with any government policy embodied in legislation, it is necessary to ensure that the public is informed of the objectives of the policy, and to understand how it is proposed to meet these goals. Public education has proved to be a particularly important facet of the work of human rights agencies, as the focus has shifted from overt or intentional conduct to more subtle and systemic forms of discrimination. This is clear, for example, from a review of the annual reports of the Ontario Pay Equity Commission, showing the activities of this kind which are carried out by that agency.

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[3] For an extensive discussion of many of these functions, see Margot Priest, (2002), *Options for Pay Equity Oversight*. Unpublished research paper commissioned by the Pay Equity Task Force. See also Lyle Fairbairn and Margot Priest, *Enhancing Compliance with Human Rights – Some Policy Options*, a paper prepared for the *Canadian Human Rights Act* Review Panel.

Human rights linked to core Canadian values and social transformation.

The kind of public education which is appropriate in connection with human rights issues differs somewhat from that associated with many other kinds of legislation. Human rights legislation has, certainly since the advent of the *Canadian Charter of Rights and Freedoms*, been explicitly linked to core Canadian values and to concepts of social transformation. It does not represent public policy in the usual sense of a political accommodation which is subject to change in light of subsequent economic or political developments.

It is thus a distinctive kind of public education and promotion that is related to the values associated with the decision of Canada as a country to confront and eliminate discrimination through human rights legislation and constitutional documents. Although the success of the general campaigns of public education conducted by the Canadian Human Rights Commission and others must not be overstated, there has clearly been a gradual increase in public familiarity with human rights principles and awareness of the recourse available to address instances of discrimination.

Human rights education must respond to social distinctions.

The form of public education which is used to forward the goals of human rights legislation must be responsive to the social distinctions which have given rise to the legislation in the first place. For example, it is important to have materials available in a variety of languages so that this information will be accessible to the widest audience possible.

17.4 The Task Force recommends that the new federal pay equity legislation provide that the mandate of the pay equity oversight agencies include providing public education and information.

Specialized information needed regarding jobs, pay levels and the labour market.

More is needed than just broad public education. Those who are entitled to claim the benefit of pay equity legislation and those who are obliged to make efforts to reduce the discriminatory impact of compensation systems also require specialized information about jobs, about pay levels, about the labour market. It is especially important, in this respect, to ensure that the information is provided to those workers who are most vulnerable to discrimination.

It is also important that employer and worker representatives who are charged with specific responsibilities in formulating pay equity plans be trained to carry out these functions. In Chapter 8, we recommend that employers have the primary responsibility for ensuring that this training is provided. However, oversight agencies can play an important role in providing materials and assistance with this training.

Training needed for developing pay equity plans.

17.5 The Task Force recommends that the new federal pay equity legislation provide that the mandate of the pay equity oversight agencies include providing specialized information and training to employers and employees directly affected by the legislation.

In Chapter 1, we have alluded to the difficulty of getting specific information about employment in the federal jurisdiction. Because of the way information about employment and compensation is recorded, it has been impossible for us to isolate the data concerning federally-regulated employers and to create a comprehensive picture of employment in the federal jurisdiction as such. We have had to combine data from various sources, and to extrapolate from criteria used in recording those data, to obtain as complete a portrait as possible. We remain concerned, however, that there is no direct way of gaining complete information about the trends in compensation in the federally-regulated sector, the precise size and number of employers under federal jurisdiction, and historical developments in employment and compensation.

Difficult to obtain accurate and specific information on employment in federal jurisdiction.

At one time, there was a Pay Research Bureau whose mandate was to collect information about employment in the Public Service, and to make these data available to decision makers. In Bill C-25, the Public Service Modernization Act, which was recently passed by Parliament, it was proposed to create a capacity for collecting this kind of information in a new public service labour relations board:

Public Service labour relations board to collect information.

> *Compensation analysis and research services* would consist of compiling, analyzing compensation data and sharing the information with the parties and the public, as well as conducting market-based compensation research.[4]

This initiative would not completely address the deficit in information concerning the federally-regulated private sector. The gathering and analysis of statistical information is a federal responsibility, carried out through the work of Statistics Canada.

Role for Statistics Canada.

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[4] Treasury Board Secretariat. Public Service Modernization Act – *Overview and Highlights*, February 2003. Available online at http://www.tbs-sct.gc.ca/mhrm-mgrh/ovhi-apps_e.asp. Accessed November 19, 2003.

It is important, in our view, that Statistics Canada take steps to gather information in a way which will allow the creation of an overall picture of employment and compensation in the workplaces which are regulated by the Government of Canada.

Impartial and objective information on public and private sectors vital.

It would be of great assistance to employers and employee organizations in the federal jurisdiction to have access to an impartial and objective source of information which could be used in assessing their pay systems, making appropriate comparisons and determining how jobs should be valued. It is also imperative for the work of oversight agencies that they have access to a source of independent and accurate information about federally-regulated employers so that they can assess the effect the legislation is having, and respond to environmental changes affecting the federal jurisdiction. Such information would have to cover both the public and private federally-regulated sectors.

17.6 The Task Force recommends that the new federal pay equity legislation provide that the pay equity oversight agencies have access to sources of independent and accurate technical information about employment and compensation in the federally-regulated public and private sectors.

Research needed to assist monitoring and provide new options.

Another element of this function of information collection and dissemination is that of research. High-quality research can provide important information about changes in the Canadian employment environment, the experience of participants in the process, comparable initiatives in other jurisdictions, developments in the international sphere, and other relevant issues. This assists oversight agencies in assessing the degree to which the legislation is having the intended effect, brings to light new circumstances which need to be taken into account, and suggests new options for addressing the issues covered in the legislation.

17.7 The Task Force recommends that the new federal pay equity legislation provide that the mandate of the pay equity oversight agencies include carrying out or commissioning research on issues related to the legislation.

Advice and Technical Assistance

Employers and employees need expert technical assistance.

We have observed that it would be desirable, as part of a statutory scheme for pay equity, to consider ways of equipping the parties to employment relationships with the information they need to undertake the necessary review of their pay structures. In addition, we think it would be helpful for the participants to have access to advice and technical assistance to guide them through the process.

Technical assistance is currently available at provincial and federal levels.

The Ontario Pay Equity Office, la Commission de l'équité salariale [Quebec pay equity commission], and the Canadian Human Rights Commission are among those oversight bodies which have produced templates and practical guides to job evaluation and wage adjustment. The templates have offered "off-the-shelf" tools to assist the parties in navigating a process they might otherwise find daunting. These materials have been particularly directed at smaller employers, who may not have the resources to hire specialized consultants to assist them, but such tools can also be a useful way of advising employers of all sizes of the criteria which are to be applied.

The review officers of the Ontario Pay Equity Office, and the staff of the Quebec pay equity commission are able to provide direct advice to parties as they proceed through a pay equity exercise. This advice may include comments on the requirements of the statute or references to helpful interpretive guidelines or informational materials, and may draw on experience in other employment settings to provide practical examples or pragmatic solutions to particular problems which are encountered.

17.8 The Task Force recommends that the new federal pay equity legislation provide that the mandate of the pay equity oversight agencies include the provision of advice and technical assistance to parties in reviewing and adjusting their compensation systems in the process of achieving and maintaining pay equity.

Investigation and Fact Finding

Oversight agencies should have power to investigate.

It is important that oversight bodies have the power to conduct investigations which free them from the need to rely exclusively on the accounts of the parties themselves, and which establish a baseline of factual information which can be used as the basis for further action.

Investigation and fact finding may be used in different ways, and the nature of the investigation may vary depending on what the results are to be used for.

> Investigation into complaints by a pay equity oversight body can take different forms, depending on the other responsibilities of the body and the objective of the investigation. An investigation to ensure that sufficient information is available to conciliate a dispute or settle a complaint is a different level of investigation than that required if taking responsibility for carrying a case before an adjudicator.
>
> Margot Priest. (2002). *Options for Pay Equity Oversight.* Unpublished research paper commissioned by the Pay Equity Task Force, p. 30.

Investigations may require power to enter premises and summon documents or parties.

In the latter kind of investigation, particularly where it is initiated by a complaint of obduracy or bad faith which may lead to sanctions of some kind, staff conducting the investigation would typically be armed with the power to enter premises, to summon documents and to require the attendance of persons in possession of key information. An investigation which is aimed at assisting in a dispute resolution process might be conducted more informally, and without calling on these coercive powers. In any case, it is necessary to spell out clearly what the parameters of such investigation are, and what powers are available to investigators.

17.9 The Task Force recommends that the new federal pay equity legislation provide that the mandate of the pay equity oversight agencies include the investigation of complaints or disputes.

Dispute Resolution

Non-litigious dispute resolution processes.

One of the most striking developments in the legal system over the past several decades has been the search for methods and techniques for resolving disputes which will reduce the reliance on the adversarial litigation process. Though adjudicative processes like arbitration are often included among the techniques described under the rubric of alternate dispute resolution, the focus is mainly on forms of facilitation or mediation which will allow parties in dispute to come to a resolution which they have fashioned themselves, rather than having a solution imposed on them by a third party.

Mediation, though controversial, has proved useful.

There has been considerable controversy about the use of these techniques in connection with human rights complaints. Bodies like the Ontario Pay Equity Commission and the Ontario Pay Equity Hearings Tribunal have found mediation a useful way of exploring the possibilities of a voluntary settlement between parties which will avoid protracted litigation or a third-party disposition of the dispute.

The criticism is made, however, that mediation can only be successful when the parties have more or less equal bargaining power; since human rights complaints are inherently about unequal bargaining power, it is inappropriate to expose vulnerable complainants to the pressures to achieve a settlement which will emerge in the course of mediation. It has also been suggested that it is not appropriate to treat human rights standards as something which a party can agree to bargain away in the interests of achieving the resolution of a dispute.

One writer has referred to the reservations of the Canadian Human Rights Tribunal in this regard:

> In particular, the CHRT concluded that mediation appeared to limit the ability to deal with repeated violations and foreclosed the opportunity to address patterns of behaviour and systemic aspects of discrimination: "settling off the record may prevent systemic discrimination from being detected, let alone rectified." Mediation did not sufficiently recognize that there is a broader interest at stake, not simply those of the complainant and respondent. In contrast to the behind closed door nature of mediation, public hearings and published rulings help expose discriminatory practices and attitudes and create a climate in which these can be challenged and discouraged.
>
> Melina Buckley. (2003). *Prospects for the Mediation of Pay Equity Matters in Federal Jurisdiction.* Unpublished research paper commissioned by the Pay Equity Task Force, p. 33.

As we have pointed out, the discourse concerning human rights—and certainly the discourse concerning pay equity—has changed considerably over the past quarter-century, as people learn more about the implications of these principles, as they come to a more sophisticated understanding about the systemic origins of discrimination, and as they devise new and more practical ways to encourage the recognition of human rights in various social contexts.

Transformative mediation: new method that may advance broader social objectives.

A similar kind of evolution has been taking place in the case of the conceptual tools of alternate dispute resolution. It is true that the norm for mediation up till recently has been focused on settlement, on the "deal" and, to the degree that this is the case, the criticism that it may be of questionable value in resolving disputes over discrimination is probably well founded. This approach presumes an equality of bargaining power, and accords priority to reaching an accommodation which will be acceptable to the parties without regard to broader social objectives. New versions of mediation have been developed, however, which may meet these criticisms and provide a helpful adjunct to the work of a pay equity oversight agency.

Referred to as transformative mediation,[5] this new type of mediation is aimed at changing the relationship between disputing parties by assisting them to examine the assumptions they are making, and the values they accept. The process requires considerable intervention by a skilled mediator, who assists the parties in identifying the roots of their dispute, in establishing a framework of principles on which any resolution must be based, and in exploring the options which will be most appropriate in their newly defined relationship.

> A redesigned pay equity system should encompass real alternatives to existing adversarial processes. These alternatives aim to resolve rather than merely settle contradictory claims over the meaning and application of equal pay norms. The legal system tends to define conflict as disputes in order to limit them. This has an important systems maintenance function. However, this approach is insufficient where the goal is social transformation rather than maintenance of the status quo.
>
> Melina Buckley. (2003). *Prospects for the Mediation of Pay Equity Matters within Federal Jurisdiction*. Unpublished research paper commissioned by the Pay Equity Task Force, p. 74.

New approaches to mediation show tremendous potential.

We think that these new approaches to mediation and dispute resolution have enormous potential to support and assist the participants in the pay equity process, and to assist them in examining how their own relationship can be altered to accommodate a vigorous commitment to the goal of removing barriers to equity. The conciliation process offered under the Quebec legislation, for example, has been very helpful to the parties. Though mediation is the most common technique used in resolving disputes, experts in dispute resolution have devised an arsenal of techniques which can be used for different purposes. These include facilitation of discussion, development of common documents, combinations of mediation with adjudication or fact finding, and assisted negotiation.

17.10 The Task Force recommends that the new federal pay equity legislation provide that the mandate of the pay equity oversight agencies include mediation and other forms of dispute resolution.

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[5] Melina Buckley. (2003). *Prospects for the Mediation of Pay Equity Matters within Federal Jurisdiction*. Unpublished research paper commissioned by the Pay Equity Task Force, p. 20.

Compliance Orders

Ontario Pay Equity Office empowered to issue compliance orders.

Under the Ontario legislation, review officers of the Ontario Pay Equity Office are empowered to issue compliance orders. These may embody the agreement reached by the parties in the course of a dispute resolution process, or they may represent a determination by the review officer of the appropriate disposition in the event a settlement has not been reached.

In our view, this is an option worth considering, as it gives to the review officer some leverage in encouraging the parties to move forward. It also has the advantage of creating a clear determination which can be the basis of adjudication in the event the parties are not in agreement with the disposition made by the review officer.

17.11 The Task Force recommends that the new federal pay equity legislation provide that the mandate of a pay equity oversight agency include the power to issue compliance orders.

Advocacy

Advocacy role of CHRC.

When the initial generation of Canadian human rights legislation was put in place in the 1970s, legislators clearly appreciated that those for whom human rights protection is most necessary are among the most vulnerable members of society, and that they could not be expected to carry their claims alone. This is why human rights commissions were given the role of acting as advocate for claims accepted for adjudication as part of their mandate.

Though the premise itself is unobjectionable, much of the criticism surrounding the work of human rights commissions has focused on a conflict of interest perceived when the body which has investigated complaints and certified them for referral to adjudication then appears as a party to the proceedings before a tribunal. In the case of the Canadian Human Rights Commission (CHRC), among others, further support was given to the allegation of a conflict by the role of the CHRC in providing administrative support, including decisions about remuneration, to the Canadian Human Rights Tribunal.

Vulnerable Canadians need assistance to advance their claims.

Despite these criticisms of the format chosen in that type of human rights legislation, the underlying principle remains persuasive—that vulnerable Canadians will not have real access to the avenues apparently available for the protection of their human rights without some source of assistance in articulating and advancing their claims.[6]

Ontario: Pay Equity Advocacy and Legal Services (PEALS).

Cognizant perhaps of the controversy arising from the inclusion of advocacy in the mandate of human rights commissions, the Ontario government chose to put in place a different mechanism in the pay equity legislation passed in 1989. This was to create a specialized legal aid clinic, Pay Equity Advocacy and Legal Services (PEALS),[7] which offered legal advice and representation to individuals and groups of non-unionized employees who wished to pursue a pay equity claim. Though there has been some suggestion that users of PEALS felt that there was an undue focus on legal services and litigation, and that more general advocacy services were not adequate, many observers of the operation of the Ontario legislation regret the elimination of PEALS in 2000, a consequence of provincial financial restructuring. Supporters argue that in the absence of PEALS or a replacement, it is difficult for non-unionized women to take advantage of the *Pay Equity Act* through their own efforts. A recent assessment of the PEALS experiment came to the following conclusion:

> On the basis of our consultations with pay equity practitioners, the documentation of PEALS history, and the draft report on PEALS cases, we must conclude that PEALS did work for many non-unionized women. Between 1991 and 2000, PEALS intervened in approximately 189 cases [that included almost 500 employees]. [...] PEALS won settlements in approximately 75 percent of these cases. Pay increases averaged $13,437 annually and $16,000 for a lump sum settlement. [As noted, workers won a wide range of settlements.] In spite of some of the contradictory responses to questions about PEALS effectiveness, the answer to those who ask if PEALS made a difference to women has to be "yes."
>
> Mary Suzanne Findlay and Rosemary Warskett. (2003). *Pay Equity for Non-Unionized Workers in Federal Jurisdictions: How to Make it Work?* Unpublished research paper commissioned by the Pay Equity Task Force, p. 7.

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[6] The importance of this advocacy function to non-unionized workers in the instance of pay equity is underlined in the case study by Gordon DiGiacomo and Paul Carr. (2003). *International Nickel Company Limited: A Case Study in Pay Equity Implementation.* Unpublished research paper commissioned by the Pay Equity Task Force.

[7] For a discussion of the operation of PEALS, see Mary Suzanne Findlay and Rosemary Warskett. (2003). *Pay Equity for Non-Unionized Workers in Federal Jurisdictions: How to Make It Work?* Unpublished research paper commissioned by the Pay Equity Task Force, p. 3.

Courts stress access to quality legal service is a fundamental right.

It should, of course, be noted that advocacy services in support of claims for pay equity are not the only form of publicly supported advocacy services which have been cut back or eliminated. Legal services plans which, in many provinces, were conceived with the objective of providing a broad range of legal services and a platform for community development advocacy, have not been able to carry out these goals. Core legal services—mainly in the areas of criminal and family law—which these plans have continued to provide are currently facing a crisis of resources in many places. At the same time, the courts have placed increasing emphasis on equal access to quality legal services as a fundamental constitutional value.

We recognize that to call for the provision of specialized advocacy services in relation to pay equity alone may be seen as unrealistic in light of the difficulties governments have had in maintaining publicly funded legal services in other areas. Nonetheless, it is our view that if pay equity is a worthwhile objective, it must surely be worth considering ways to ensure that the people who are the most likely to suffer from wage discrimination—non-unionized women—do not continue to experience pay equity guarantees as something which exists for them only in a theoretical sense.

Possible model: British Citizens Advice Bureaux and Community Legal Services.

We have one suggestion which we acknowledge to fall somewhat outside our mandate, but which may assist in addressing this problem. Our recommendation is that the federal government study the British institution of Citizens Advice Bureaux and the associated Community Legal Services. These organizations, which have been established in numerous centres in the United Kingdom, represent a large-scale co-ordination of public information, advice and legal representation related to a wide range of government programs and services. The national government invests public funds in professional staff and administrative expenses, but the unique feature of the system is its success in harnessing and co-ordinating the contributions of individual volunteers, community and non-profit organizations, and lawyers, mediators and other professionals acting on a *pro bono* basis.

Advocacy needs for many public programs and services.

For several reasons, this kind of option is worthy of careful consideration. The same rationale which underlies our argument that advocacy services are essential as a vehicle for access to the benefits of pay equity legislation is applicable to many other public programs and services which are intended to be available to members of Canadian society who may not have the skills or resources to pursue claims or to obtain adequate information. Having one clearinghouse for providing information, advice and references to government departments, offices or agencies would be one way of making the most effective use of the resources allocated for similar purposes.

This approach would harness volunteer and not-for-profit resources and other civil society institutions.

Another reason for looking seriously at this option is that it provides an opportunity to harness the resources available in the volunteer and not-for-profit sector in an efficient way. The organizations of civil society have played an important role in bringing about advances in human rights and the protection of disadvantaged individuals and groups. The establishment of a network of offices offering advice and advocacy services would allow them to continue to play this role in a setting in which they would enjoy administrative and other support for their activities.

It is perhaps timely to be investigating this model because of the efforts of the legal profession across Canada to encourage lawyers and law students to make more extensive *pro bono* contributions and to devise ways of dovetailing and co-ordinating these activities. At the mid-winter national meeting of the Canadian Bar Association in February 2003, a motion was adopted suggesting that lawyers should be encouraged to contribute three percent of their annual billable time to service *pro bono*. Though it would be necessary to ensure that those undertaking an advocacy role have expert knowledge of issues related to human rights and specifically to wage discrimination, a properly co-ordinated *pro bono* program would be able to match this kind of expertise with the needs of workers for advocacy in this specialized environment.

We note that the *Canadian Human Rights Act* Review Panel recommended that advocacy resources be provided in connection with human rights complaints.[8] The Review Panel's recommendations included the suggestion that consideration be given to imposing a surcharge on amounts awarded to complainants in order to help fund the costs of an advocacy clinic or, alternatively, to consider empowering the Canadian Human Rights Tribunal to award legal costs against parties found to have violated the Act. We would not favour either of these methods of funding advocacy services, although we recognize the need for imaginative thinking about the funding of such an enterprise. In the case of human rights complaints which focus on improper conduct, the amounts awarded to complainants can be seen as a form of damages to which the "contingent fee" model may be appropriate. In the pay equity context, where the focus is on systemic considerations, any amounts awarded would be for wages lost because of discrimination, and the argument for taxing this to pay for representational services does not seem quite as persuasive. We also have reservations about introducing the concept of awards of costs into this kind of administrative proceeding. As we observed in Chapter 14 this mechanism may be more appropriate to the adversarial setting of the courtroom, with some exceptions.

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[8] *Canadian Human Rights Act* Review Panel. (2000). *Promoting Equality: A New Vision*. Ottawa: Department of Justice, pp. 76-77.

We do think that innovative ways can be found to provide funding for advocacy services. It is worth exploring a model such as the above-mentioned British Citizens Advice Bureaux, in which public funding is combined with private charitable funding and with volunteer and *pro bono* contributions of services.

Usefulness of pay equity committees.

In Chapter 8, we commented on the importance of employee participation in the formulation of pay equity plans, and recommended the establishment of pay equity committees similar to those in place under Québec's *Pay Equity Act*. This mechanism appears to have provided an effective means of granting non-unionized employees access to the formulation of pay equity plans.[9] As we have indicated, it is to be hoped that support for employers, employees and employee representatives as they work towards achieving pay equity would reduce the degree to which parties resort to the mechanisms of adjudication and sanction provided in the legislation. All the same, no system can hope to provide obvious answers to all questions of statutory interpretation or to convince all employers to make vigorous efforts to comply with the legislation. There will still, therefore, be a need for advocacy support for those who have no community organization or trade union to speak for them.

17.12 The Task Force recommends that the new federal pay equity legislation provide for advocacy services for unrepresented workers.

Adjudication

Under section 11 of the *Canadian Human Rights Act*, much of the time and resources of the participants in pay equity exercises has been focused on adjudicative process, and it is not surprising that many of the comments and submissions which were made to us were directed at the adjudicative role of the Canadian Human Rights Tribunal. One would hope that adjudication would cease to be the primary focus of attention under a new legislative scheme providing clear standards, adequate front-end assistance in formulating pay equity plans, and timely intervention to resolve disputes.

Adjudication will remain necessary.

It is our view, however, that one or more adjudicative mechanisms are necessary to provide an ultimate recourse for intractable problems of interpretation or commitment. It is therefore necessary for us to address the characteristics which should be associated with this role.

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[9] Findlay and Warskett, *supra*, note 7, p. 12.

In Chapter 3, we commented on recent decisions of the Supreme Court outlining its views on the nature of the independence which is required in adjudication by administrative tribunals.

Credibility of adjudicative bodies depends on independence.

It should not be thought that this concept of independence applies only to the adjudicative role played by administrative agencies. It is clearly important that an administrative agency be perceived as acting at arms' length from executive and legislative government if the agency is to be effective in other areas such as research and information, the provision of advice, investigation and fact finding, and policy making. The connection between independence and credibility is especially clear in the case of an issue like pay equity, where executive government plays in part the role of a major employer with a vested interest in the application of the legislation. The courts have, however, been particularly concerned about the independence of adjudicative bodies and have thus established particularly demanding standards in this regard.

The Supreme Court has acknowledged[10] that administrative agencies are not courts: the dual responsibility for bringing an impartial perspective to bear while maintaining fidelity to the statute's legislative objectives means that a unique kind of independence is expected of them.

> Also, whatever agency is established must be neutral and should be seen by all parties to be impartial, objective and fair.
>
> Canadian Bankers Association (CBA). Submission to the Pay Equity Task Force, November 2002, p. 5.

Judicial review decisions are important to administrative agencies.

The views of the courts as uttered in response to applications for judicial review are not the only, or even the main, guideline for administrative agencies as they carry out their statutory mandate. The principles which the courts have laid down do help, all the same, to create a clearer understanding of the implications of independence, and provide clues as to how the architects of legislation and those responsible for putting legislative policy into effect can create administrative agencies which will be able to proceed vigorously and with minimum intervention from the courts to carry out the work they have been given by the legislature.

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[10] *Ocean Port Hotel v. British Columbia (General Manager, Liquor Control and Licensing Branch)*, [2001] 2 S.C.R. 781.

The recent jurisprudence of the Supreme Court suggests that the following elements would help to support the autonomy and credibility of any adjudicative agency working under new federal pay equity legislation:

i) A clear statement of legislative intention

The single most important principle set out by the Supreme Court has been that the primary criterion for measuring the appropriateness of the actions of an administrative agency is what the legislature indicated its intention to be in the statute. Though this principle emerged in a context in which statutes rarely contained explicit indications of self-conscious legislative intention, such statements have become more common, and more recent legislation is frequently characterized by purpose clauses or preambles which lay out the social problems and policy goals which lie behind the decisions to enact laws.

ii) A strong privative clause

The process of drafting preclusive or privative clauses, which would state a clear intention by the legislature to protect the decisions of a given administrative body from judicial review or other intervention by the courts, was at one time a kind of cat-and-mouse game between legislative drafters and judges. The response of the courts to this tension has been a firm statement that the plenary jurisdiction of the courts to hold decision-making bodies to account cannot be ousted completely. On the other hand, they have reasserted their respect for privative clauses which are clearly intended to make the adjudicative decision in question a final decision.

iii) An expert tribunal

In assessing whether the decisions of an administrative agency are deserving of deference, the courts have recently emphasised to an increasing extent the importance of the specialized expertise of a tribunal as a determining factor. Though there may be some debate about the justification articulated by the Supreme Court as the reason for imposing a more intrusive standard of review on generalist human rights tribunals there can nonetheless be no doubt that, in the eyes of the judges, a strong rationale for deference lies in the ability of members of a tribunal to do things which courts cannot do—that is, bring their specialized skills and experience to bear on a well-defined set of problems.

> Notwithstanding the decision as to whether there should be a freestanding pay equity agency, or whether it should be part of a pre-existing human rights commission, the need for an independent, well-trained and educated decision-making body remains.
>
> Communications, Energy and Paperworkers Union of Canada (CEP). Supplementary submission to the Pay Equity Task Force, November 2002, p. 7.

Sufficient pool of trained people now exists to staff a specialized pay equity agency.

We have already indicated that we favour the establishment of a specialized pay equity agency, and we will be elaborating on this shortly. At one time, it would have seemed impossible to assemble members and staff for an agency concerned exclusively with pay equity. We are confident that there now exists an extensive pool of people—employers, employees, trade union staff members, elected officers, consultants and academics—whose experience and study of the principles and technical requirements of pay equity qualify them to make adjudicative decisions in this field. We would also expect that the focused experience of a dedicated agency would reinforce existing knowledge and skills of agency members and staff, and that this experience would result in the building of additional expertise in the agency.

17.13 **The Task Force recommends that the new federal pay equity legislation provide for the creation of specialized and independent pay equity agencies, with their adjudicative functions protected by a strong privative clause.**

Adjudicative Functions

We think that there are two separate kinds of adjudicative functions which could be carried out by oversight bodies in connection with pay equity legislation.

Statutory interpretation.

The first function would be adjudication with respect to matters of statutory interpretation, approval of the elements of pay equity plans, determinations of the definition of the pay equity unit which will be used, successorships and other general issues in relation to which the creation of an authoritative body of jurisprudence may be important. This would be analogous to the jurisdiction of a labour relations board under a collective bargaining statute.

Arbitration procedures.

The second kind of adjudication would be akin to the grievance arbitration procedure under a collective agreement.[11] The subject matter of this kind of adjudication would be questions arising out of a particular pay equity plan or employment relationship—for example, whether a pay equity plan needs to be altered to accommodate a new job or changes in the nature of a particular job, how the terms of a new collective agreement impact on existing pay equity plans, or whether the terms on which the plan was agreed to have been observed. A single expert arbitrator, perhaps identified from a list by the general adjudicative body, would conduct a summary procedure similar to grievance arbitration.

Regulation and Monitoring

Receiving reports on pay equity plans

A further function which may be carried out by an oversight agency in connection with pay equity is that of regulation and monitoring. Such a function might have a number of aspects, one of which would be to receive reports on pay equity plans required by the legislation. At the very least, this would entail a further record-keeping and tabulation function.

A more ambitious associated function would be for the oversight agency to review the plans and provide feedback concerning the extent to which they appear to comply with the legislation.

Audit System

A less resource-intensive way of dealing with pay equity information supplied in accordance with a reporting function would be for the oversight agency to put in place an audit system. Such a system could take a number of forms:

- Random selection of pay equity plans for review, on the assumption that the prospect of a random audit would provide an additional incentive for compliance.
- Audit on a sectoral basis, which would ultimately produce a comprehensive picture.
- Audit on the basis of identified factors suggesting a greater need for vigilance—past employer resistance, or statistical information about types or sizes of employers associated with lower levels of compliance.

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[11] We are grateful to both Margot Priest and Richard Chaykowski who made this suggestion.

Audit system would require fewer resources.

Such an audit system would require fewer resources than a regulatory system based on a comprehensive review of all pay equity plans, while the prospect of an audit would offer an incentive to formulate plans and to submit them in accordance with reporting requirements.

Finally, a regulatory function which an oversight agency might play would be to monitor the maintenance of pay equity plans. Again, this could be done through some sort of regular reporting requirement intended to elicit from employers materials demonstrating that they have continued to maintain their pay equity plan. We have suggested in Chapter 13 of this report that the postings which employers are obligated to provide as part of the maintenance of their pay equity plans could be accepted as meeting these reporting requirements. This kind of monitoring could be less onerous than reviewing all initial pay equity plans, in that some kind of checklist format could be used, perhaps in electronic form. This monitoring at the maintenance stage could also be based on an audit system.[12]

17.14 The Task Force recommends that the new federal pay equity legislation provide that the mandate of the pay equity oversight agencies include a monitoring and audit function.

Rule and Policy Making

As we have commented, the dissatisfaction with the current system in place under section 11 arises in large part from uncertainty as to the standards which are required and therefore as to what the outcome will ultimately be of any complaint. It is argued that some ability to predict the outcome provides useful guidance to participants trying to decide what they need to do to remain within the law. It was in response to this argument that the Canadian Human Rights Commission attempted to put more flesh on the bones of section 11 by adopting the *Equal Wages Guidelines, 1986*.

Supreme Court comments on usefulness of guidelines such as the *Equal Wages Guidelines, 1986*.

In the recent Bell Canada decision,[13] the Supreme Court of Canada commented on the important role which can be played by policies and guidelines in clarifying the rights and responsibilities of those affected by legislation:

> We note in passing that, given the relatively small volume of s. 11 equal pay cases adjudicated by the Tribunal, the promulgation of guidelines by the

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[12] There is further discussion of these monitoring, maintenance and enforcement issues in earlier chapters of this report. See for example Chapters 13, 14 and 15.

[13] *Bell Canada v. Canadian Telephone Employees Association* [2003] SCJ No. 36; 2003 SCC 36; Court File No. 28743.

> Commission has likely provided parties with a sense of their rights and obligations under the Act in a more efficient and clearer way than would an incremental development of informal guidelines by the Tribunal itself, through its decisions in particular cases.

The Court also pointed out that the Canadian Human Rights Commission was in a position to draw on its knowledge of the evolution of human rights principles across the country, and to formulate policies which would reflect these developments.

Clear guidelines and rules mean clear expectations.

The use of rule- and policy-making powers by oversight agencies can thus provide a useful indication of the expectations which the parties face in carrying out their legislative obligations.

> Canadian human rights bodies have not traditionally made use of rule-making or even the development of binding guidelines where permitted by law. In general, Canadian administrative law has paid little attention to this subject and has focused on the development and promulgation of regulations by governments. Rule-making, however, can be a useful tool to deal with various problems and avoids the limitations, expense and uncertainty of dealing with issues on a case by case basis.
>
> Margot Priest. (2002). *Options for a Pay Equity Oversight Agency.* Unpublished research paper commissioned by the Pay Equity Task Force, p. 35.

Notice and comment procedure.

There are a number of ways in which a rule-making or policy-making power may be exercised by an administrative agency. One example is the notice and comment type of procedure which is used by the Ontario Securities Commission. Under this procedure, the Securities Commission must give a notice setting out the substance of the rule, the authority and rationale for it and a summary of the options which were considered and the reasons for rejecting the alternatives. The constituencies that will be affected by the rule are then given an opportunity to comment on the rule before it comes into effect.

Public hearings.

Another mechanism which is particularly appropriate for the development of interpretive policies is to hold a "generic proceeding,"[14] a form of public hearing which gives those with an interest in a major interpretive issue a chance to make submissions about their own preferred approach. In addition to providing the oversight agency with a wider range of options and perspectives than it would be likely to develop on its own, such a process involves stakeholders and other interested parties in the formulation of the interpretive principles which will be used. It also means that the cost of this policy formulation process is not entirely borne by the first set of parties who happen to raise an issue.

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[14] This term is used by Margot Priest, *supra*, note 3, p. 37.

Such a procedure could be helpful in setting an interpretive and policy course on issues under pay equity legislation which are likely to have continuing importance, such as the criteria for the selection of appropriate proxy employers, or the process by which weight will be given to historical incumbency in deciding on gender predominance.

Importance of disseminating policies and rules.

Though it almost goes without saying, it is important that any policies or rules which are eventually adopted by an oversight agency receive wide circulation, and that they be included in any public information or client education campaigns which are conducted.

In this discussion, we have been alluding to the capacity of an oversight agency to formulate rules and policies which will clarify expectations and set out interpretive principles to guide participants and remind tribunal members of the importance of a consistent approach. While such consistency and clarity are important, it is also important that oversight agencies maintain sufficient flexibility to accommodate changes in circumstances or to express revisions of earlier policies. It is thus desirable that these agencies be permitted to create guidelines and policies which do not bind them in any formal sense.

Oversight agency should have power to formulate regulations for approval by the Governor-in-Council.

It is also necessary, however, that an oversight agency be able to signify the priority of rules and policies, in appropriate cases, by obtaining for them more formal designation as regulations. We are recommending that the legislation give the Canadian Pay Equity Commission we describe below the power to formulate regulations for approval by the Governor-in-Council.

17.15 The Task Force recommends that the new federal pay equity legislation provide a rule- and policy-making power for the oversight agencies, and that this include the power to make regulations.

Appeals

In many statutory regimes, there is provision for an appeal from a decision at one level of the decision-making process.

In some cases, a statute provides for an appeal from the decision of an administrative body to a court. In others, there is a separate administrative body which adjudicates appeals from another level of decisions within the same statutory system; for example, the Ontario Pay Equity Hearings Tribunal hears some cases as appeals from compliance orders issued by review officers of the Pay Equity Office.

A statute may provide for an appeal which involves a rehearing of the issue from the beginning, or it may provide for an appeal which must be based on an allegation that a specific error has been made in the original decision.

Proposed tribunal should have power to hear appeals.

With respect to the structure of the oversight agencies we are recommending, it is important that the body we are calling the "Canadian Pay Equity Hearings Tribunal" have the power to hear appeals from compliance orders of review officers at the Canadian Pay Equity Commission, and also from the decisions of pay equity adjudicators, whose role we will indicate later in this chapter.

17.16 **The Task Force recommends that the new federal pay equity legislation provide that the mandate of the adjudicative oversight agency include authority to entertain appeals from compliance orders of review officers, and from the decisions of pay equity adjudicators.**

Enforcement and Remedies

The choice to implement public policy through the enactment of a statute carries with it the corollary decision that there will be some consequences for the failure to observe the requirements of the statute. An assessment of what kinds of consequences will bring about a higher degree of compliance is a complicated one, and oversight agencies may be given remedial authority of various kinds. Some statutes provide for very specific remedies or sanctions, while others contain a more general remedial power which may be exercised in a number of ways subject to the proper exercise of discretion by the tribunal.

Administrative statutes may call for penal sanctions.

In addition, administrative statutes often contain quasi-criminal sanctions which may take the form of fines or imprisonment following a successful prosecution in a criminal court. These penal provisions are used relatively rarely, but they continue to be included almost as a matter of course.

Range of remedies is very broad.

The range of remedies which administrative tribunals have been empowered to apply is very broad, but they may be seen as falling into several general categories:

i) Make-whole remedies

These remedies are intended to put someone complaining of a statutory violation in a position which is as similar as possible to the position in which the complainant would have been without the violation. Under section 11, for example, the Canadian Human Rights Tribunal has the power not only to direct an employer to eliminate wage discrimination in the future, but also to direct the employer to pay the affected employees a wage adjustment retroactive to the time when they filed the complaint. Though this is not a make-whole remedy in the sense that it purports to recreate the situation that existed when the discrimination first occurred, it does attempt to ensure that the situation is rectified from the time attention is drawn to it by a complaint. In extreme cases, the tribunal may intervene to carry out specific concrete steps which some party had an obligation to take under the statute.

ii) Remedies intended to preserve the status quo or to address emergency situations

Administrative tribunals have increasingly been given the power to order interim remedies which are designed to preserve the *status quo* or to give provisional relief under circumstances in which the situation may be significantly altered before a final determination can be made. Though there are not many situations connected with pay equity which would suggest a need for such remedies, one can conceive that such powers might be relevant to some cases, such as a scenario where a possible successorship is imminent.

iii) Remedies intended to alter individual conduct

Though the courts have held that administrative tribunals cannot impose sanctions which are penal in nature, or which trespass on the personal civil liberties of individuals, there are examples of remedies which are intended to bring about a modification in undesirable conduct. There have been instances, for example, in which people found to have violated a statute have been required to take a particular kind of training, or where recalcitrant employers have been ordered to engage in certain kinds of discussions with employee representatives. In other instances, a specific monitoring or reporting schedule may be put in place to ensure that the directives of the tribunal are carried out.

iv) Ameliorative remedies

In some cases, remedies have been devised which have a general ameliorative purpose in the context of the objectives of the statute. Parties may be required to undertake certain training programs or facilitated discussions in the hope that these will bring about a general improvement in their relationship or their competence to meet statutory goals. These remedies are intended not only to bring an end to a particular dispute, but also to produce changes in the environment, making future compliance with the statute more likely.

All of these kinds of remedies have their place in support of a pay equity regime, and could be part of the remedial capacity available to an oversight agency or agencies.

It is our view that all of these functions are necessary to a comprehensive statutory regime to address the issue of wage discrimination. We have addressed these remedial options more specifically in Chapter 14 concerning enforcement of pay equity legislation.

17.17 **The Task Force recommends that the new federal pay equity legislation provide that the oversight agencies have adequate remedial and enforcement powers to ensure that the goals of the legislation can be met.**

> [TRANSLATION] [The commission] must establish and maintain frequent, open and respectful contact, with workers and unions as well as with employers. It must interpret the law in accordance with the spirit which led to its adoption. It must operate transparently, with speed and flexibility, in unbiased support of the parties. It must be capable of leadership and of taking initiatives to assist workplaces in completing their work and must work to bring the parties together and to resolve rapidly any disputes which arise. It must work to bring about better understanding and acceptance of the law, as well as to familiarize the public with pay equity.
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> Fédération des travailleurs et travailleuses du Québec (FTQ). Submission to the Pay Equity Task Force, April 2002, p. 11.

Structure

In our view, it is necessary to put in place several different components to perform the functions which we have listed above.

Oversight agencies must have distinct roles and be independent.

The cumulative experience with pay equity legislation in various jurisdictions suggests that, though oversight agencies must have in common a commitment to the principles articulated in the legislation and a high level of specialized expertise, there is a need for separate agencies which will perform distinct tasks, and which will do so in a way which is not influenced to an improper degree by the decisions reached or the steps taken in another part of the system.

The structure we are suggesting consists of three major components: a Canadian Pay Equity Commission, a Canadian Pay Equity Hearings Tribunal and a network of pay equity adjudicators.

Adequate resources are essential.

We have alluded earlier to the need for adequate resources, and we would reiterate that this is of critical importance to the success of any legislative initiative. The premise of our review of the legislation—that the achievement of pay equity is a worthwhile policy goal—was reinforced in our discussions with all of the participants in the current system. The resources required to make meaningful progress towards this goal are not insignificant, but this is true of any worthwhile policy objective, and we do not think the structure we are suggesting would be unduly costly. Indeed, we think it would represent a more efficient use of resources than the current system. The resources required would include those necessary to support stakeholders in their voluntary efforts to achieve compliance, and would have to be sufficient to permit the hiring and retention of expert staff, and the production of useful educational and informational materials. In the current environment, it is also necessary to provide administrative agencies with an information technology infrastructure adequate to support electronic administrative and educational practices which are commonly used.

Criteria for creating pay equity oversight agencies.

In considering appropriate structures for the oversight and administration of pay equity legislation, we have been guided by a number of criteria which we think are necessary to safeguard the interests of all of those who will be affected by the statute.[15] These include:

- **Fairness**: The provision of equal access to the benefits of the statute, timeliness, and due process.
- **Transparency**: The openness of the decision-making process, and consequent accountability to the stakeholders and the public.
- **Efficiency**: The ability of the decision-making bodies to proceed in a timely fashion, and to use their resources to the greatest effect.
- **Effectiveness**: The success of the regulatory or administrative structure in bringing about progress towards the goals of the statute.

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[15] See Margot Priest, *supra*, note 3, p. 49.

The recommended configuration which we sketch out here is based on our conclusion that the current structure has been found wanting according to these criteria, for reasons which we have outlined in earlier parts of this report. We have confidence that the changes we are recommending will meet these important criteria more adequately.

Canadian Pay Equity Commission

Independent, stand-alone Pay Equity Commission.

We have concluded that the issues related to pay equity are sufficiently distinctive, and the expertise required to address them so specialized, that it is desirable to establish a dedicated expert Canadian Pay Equity Commission with statutory authority derived from a statute separate from the *Canadian Human Rights Act*.

> We know that pay equity is a highly specialized area of human rights and employment and labour law and practice. We know that a high level of expertise is required. For the law to be effective, we would argue that dedicated resources on this question are needed—resources which are not in competition with other important human rights issues and measures. A well-resourced agency would help ensure the implementation and maintenance of pay equity throughout the federal sector and could be especially important for women workers and women of colour in accessing their rights. A separate, well-funded pay equity agency would send a strong message indicating support for a culture of equality in employment in Canada.
>
> Canadian Labour Congress (CLC). Final submission to the Pay Equity Task Force, November 2002, p. 10.

We are therefore recommending the establishment of an independent stand-alone commission—a Canadian Pay Equity Commission—whose members will be appointed for their expertise in job evaluation, compensation systems, industrial relations, human rights or some other field relevant to pay equity.

Commission would have broad responsibility for promoting and implementing the goals of the statute.

The Canadian Pay Equity Commission would have broad responsibility for the promotion and implementation of the goals of the statute. In the context of a proactive mandate, it would play a highly important role in guiding and assisting participants in meeting their statutory obligations. In particular, it would perform the following functions:

i) Public education and promotion

The Commission would have responsibility for conducting campaigns of public education and promotion of the objectives of the pay equity statute. It would provide informational and educational material which would be designed both to raise public awareness of the significance of pay equity, and to provide the information necessary for employers, employees and others affected by the pay equity issue to understand their rights and obligations. The Commission would also conduct or commission research into pay equity issues, and disseminate the results of this research as widely as possible.

ii) Advice and technical assistance

The Commission would have the capacity to provide advice and technical assistance to employers, employees, employee organizations and others involved in the pay equity process. This would include responding to inquiries, and publishing templates or practical guides to the process for use by parties wishing to develop a pay equity plan.

Commission review officers would provide legal and practical advice.

Commission staff—the Ontario statute uses the term "review officers"—would guide the parties through the process of achieving pay equity. The review officers would provide advice on the requirements of the statute and on practical ways of meeting these requirements, and facilitate discussions between the parties. We are recommending the adoption of the feature of the Ontario legislation which empowers these review officers to issue compliance orders, which either embody an agreement reached by the parties, or which represent the determination by the review officer of what is necessary to produce compliance.

Sectoral pay equity plans.

The assistance provided by the Commission would include guidance on how to form sectoral groupings to address pay equity issues, and how to develop pay equity plans on a sectoral basis. The Commission would also assist employers with providing the training necessary for employees and managers, particularly those participating in pay equity committees.

iii) Investigation and fact finding

Authority to conduct investigations.

The Commission would have the authority to conduct investigations and carry out fact-finding exercises. These would include both informal investigations meant to provide basic information for the parties, and more formal investigations triggered by an allegation of wrongdoing or recalcitrance. The Commission must be equipped with adequate authority to carry out these investigations, including the power to enter premises, to require the attendance of particular persons and to summon and seize documents.

Earlier in this chapter, we recommended that special advocacy services be made available to complainants under pay equity legislation. We explained in that section that we think it important that the Commission be able to perform its role of education and promotion with respect to pay equity without being drawn into an adversarial role in adjudicative proceedings by acting as advocate for a complainant.

The Commission might, however, play a useful role by presenting or explaining the results of its investigations in the context of tribunal adjudication. The well-informed perspective of the Commission would clearly be of assistance to the tribunal in understanding the nature of the dispute.

iv) Dispute resolution

The Commission could offer dispute resolution services.

The Commission would have the capacity to offer dispute resolution services. These would include the dispute resolution techniques which might be used by review officers in the course of assisting the parties through the pay equity process. It would also include a capacity to mediate or facilitate broader-based discussions of controversial or disputed issues; this might occur, for example, when employer and employee representatives are brought together to provide input about policy issues for the Commission.

v) Regulation and monitoring

Commission responsible for regulation and monitoring of the statute using an audit system.

The Commission would have responsibility for the ongoing regulation and monitoring of the compliance with the pay equity statute. We have described in Chapter 14 the kind of monitoring which we think is necessary to create confidence that compliance with the legislation is being achieved. Though a higher degree of certainty about the contents of individual plans would result from a system where each plan was subjected to full scrutiny, we recognize that this is impractical, and that an audit system is adequate to permit the Commission to monitor the progress of employers towards the goals set out in the statute.

The Commission would have a role in the ongoing maintenance of pay equity plans. As we have seen, the process of achieving pay equity has been the major preoccupation of stakeholders and oversight agencies up to this point, and relatively little attention has been paid to the question of whether pay equity plans are being maintained. We think it is necessary to build in mechanisms which will remind the parties to review and, if necessary, revise pay equity plans at regular intervals.

We are recommending that the statute require that pay equity plans be reviewed at three-year intervals and that a report be filed with the Commission indicating any amendments which have been made. This would provide the basis for an audit system which could gauge the extent to which pay equity plans are being kept up to date. If such an audit discloses a failure to maintain a pay equity plan, the Commission would intervene to assist the parties to review the plan.

vi) Rule making and policy making

Commission should have power to formulate interpretive policies, rules and guidelines.

We think it is necessary to equip the Commission with the power to formulate interpretive policies, rules and practical guidelines for the assistance of parties affected by the Commission's work and, where it is desirable, to secure for these the status of regulations. The Bell Canada decision of the Supreme Court of Canada has confirmed that a Commission dealing with human rights issues can play a useful role in setting out interpretive principles and policies to guide the application of a human rights statute, and to clarify what is expected of those who are affected. The policy- and rule-making power of the Canadian Pay Equity Commission should be broad enough to permit the Commission to obtain input and comment through public hearings or a notice and comment type of process, in order to ensure that there are opportunities for adequate discussion of the proposed interpretive policies.

vii) Enforcement

The decisions of adjudicative tribunals can be enforced in various ways. One of these is to provide for the filing of decisions with the courts and to employ the enforcement apparatus of the judicial system. Another is to provide for enforcement within the administrative structure itself.

Both the courts and the Commission should play a role in the enforcement of decisions.

The choice of methods of enforcement depends partly on the nature of the remedies which are ordered as part of the decision. As we will be recommending that the adjudicative arm of the system have a broad and flexible range of remedial options at its disposal, it would be appropriate to provide that both the courts and the Pay Equity Commission play a role in the enforcement of decisions.

Where, for example, a decision orders that employees be paid a particular amount to correct the discrepancy in their wages, it is likely that enforcement through the judicial system would be the most effective way of ensuring that the decision is implemented. Where, however, the decision contemplates a more ameliorative remedial solution—such as a direction that the parties undertake further review of a pay equity plan, or that they attempt to improve the climate in the workplace in some way—we think the Commission could play a useful role in overseeing and guiding this process, and that this role would fit well with the competence and resources we envision for this body.

17.18 **In order to implement the preceding recommendations, the Task Force recommends that the new federal pay equity legislation provide for the establishment of an independent Canadian Pay Equity Commission composed of members with expertise in pay equity, with a mandate including the following functions:**

- **public education and promotion of pay equity issues;**
- **provision of advice and technical assistance;**
- **investigation and fact finding;**
- **dispute resolution;**
- **regulation and monitoring, including an audit function;**
- **issuing compliance orders;**
- **rule making and policy making; and**
- **enforcement measures.**

Canadian Pay Equity Hearings Tribunal

We have emphasized the importance of providing extensive support to stakeholders as they make efforts to bring the wage policies in their workplaces into conformity with the requirements of the pay equity statute, and we have expressed the hope that this would go far to redirect the emphasis from complaints and litigation to good-faith efforts to correct wage discrimination where it has been identified by the parties themselves.

We have also said, however, that we have concluded that it is necessary to retain a capacity for adjudication in the statutory scheme, which would provide individual employees, groups of employees, employers, and the Commission itself with recourse in the event that a dispute is resistant to other kinds of resolution, or that one of the parties declines to make reasonable efforts to comply with the statute.

The adjudicative body should be independent of the Commission and executive government.

It is therefore necessary, in our view, to establish an adjudicative body within the framework of the statute. For the reasons we have given, it would be necessary for this body to be independent of the Commission and of the influence of executive government, and to be capable of bringing specialized expertise to bear on issues arising under the statute.

We are recommending that this tribunal, which we will refer to as the Canadian Pay Equity Hearings Tribunal, be a stand-alone tribunal composed of members with expertise in pay equity matters.

Our opinion is that it would be conceivable that such a tribunal could be created as a specialized panel of the Canadian Human Rights Tribunal. We are recommending that it be created as a stand-alone agency, however, because of the specialized and technical nature of the issues surrounding pay equity. It would, in our view, enhance the credibility of the decisions of the Tribunal if it could recruit and develop expertise focused exclusively on these difficult issues.

We would envision that the Canadian Pay Equity Hearings Tribunal would perform the following functions:

i) Investigation

Tribunal should be empowered to investigate disputes.

Because we are recommending that, under certain circumstances, the proposed Canadian Pay Equity Commission should be able to refer matters for adjudication on its own initiative, but without standing as a party before the Tribunal, we believe that it is necessary for the Tribunal to have the capacity to investigate disputes prior to deciding whether the disputes are appropriate for adjudication. In these cases, we believe it would also be necessary for the Tribunal to be able to summon the relevant parties to participate in adjudicative proceedings.

ii) Dispute resolution

Tribunal should be empowered to use mediation or other tools.

We have described the use of dispute resolution which can be made by staff and members of the Commission. We would also favour providing the Tribunal itself with the capacity and the mandate to use mediation or other techniques of alternate dispute resolution during the course of its proceedings. This would provide opportunities throughout the adjudicative process to take advantage of the possibility of settlement or agreement on some basis other than a final disposition by the Tribunal.

iii) Rule and policy making

In the structure we envision, the Canadian Pay Equity Commission would have a primary role in promoting pay equity principles and educating the public about them. The broad perspective of this Commission would permit it to articulate policies and rules which would reflect the current understanding of these principles, and would provide useful guidance to those with rights and responsibilities under the statute.

Tribunal should have the power to formulate rules and policies.

It is important as well, though, that the Canadian Pay Equity Hearings Tribunal have the power to formulate rules and policies to provide guidance to decision-makers and participants within its own domain. The most obvious example of this would be guidelines covering procedural aspects of adjudicative proceedings. This Tribunal would have sufficient grounding in the purpose and nature of the statute that it could provide a useful source of considered advice and direction for participants, and such rules and policies would assist its own members to arrive at consistent and fair decisions.

iv) Adjudication

Adjudication will have an important constitutive role in explaining and elaborating policy goals.

There may be circumstances in which the parties involved must resort to a full-blown, formal process to adjudicate issues which have proven resistant to any other resolution. The adjudicative role is an important one, and is not necessarily a sign of some failure in the process. The deliberative decisions of an impartial body which has considered contrasting perspectives on an issue can make an important contribution to the iterative development of a deeper understanding of the implications of the statute by the constituencies served by it, and of a more sophisticated ability on their part to pursue the policy goals which the statute represents. Indeed, in the early life of a new statute, one would expect that adjudication will have an important constitutive role in explaining and elaborating those policy goals.

17.19 **In order to implement the predecing recommendations, the Task Force recommends that the new federal pay equity legislation provide for the establishment of a specialized, independent Canadian Pay Equity Hearings Tribunal, with a mandate which would include the following functions:**

- **investigation;**
- **dispute resolution;**
- **rule making and policy making;**
- **education and information concerning its own operation; and**
- **adjudication, including adjudication of appeals of compliance orders from the Canadian Pay Equity Commission and from the decisions of pay equity adjudicators.**

Pay Equity Adjudicators

Adjudication forum that would parallel grievance arbitration system.

We have indicated that we think there is value in considering the introduction of an adjudicative forum which would parallel the grievance arbitration system under collective agreements. The jurisdiction of an adjudicator would be to consider issues of a limited nature arising under particular pay equity plans. Such issues might include the amendment of a pay equity plan to accommodate a new job or groups of jobs, allegations that some term of a pay equity plan had not been observed, or disputes arising over the monitoring or reporting requirements.

The intention would be to create a swift and relatively informal process analogous to grievance arbitration, with access to an adjudicator with expertise related to pay equity, who could be named by the Pay Equity Hearings Tribunal from a list compiled by it. One of the advantages of this mechanism would be that, in collective bargaining relationships, at least, the parties would be familiar with this kind of proceeding, and would have some confidence in it as a way of resolving disputes.

17.20 The Task Force recommends that the new federal pay equity legislation provide for the establishment of a system of pay equity adjudicators to carry out the following functions:

- **the interpretation of disputed terms of pay equity plans;**
- **the application of the legislation to changes in the circumstances in the workplace which gave rise to the pay equity plan; and**
- **the resolution of disputes between the parties to a pay equity plan over the application of the terms of that plan.**

Parliamentary Review

Though we are confident that the legislative regime we have proposed in this report is flexible enough to accommodate a wide range of changes in economic, social and political circumstances affecting federally-regulated employers, we recognize that it is desirable to provide for systematic appraisal by the legislature of whether the legislation adequately supports the goal of achieving pay equity for workers under federal jurisdiction.

We are therefore recommending that the legislation provide for a parliamentary review of the proposed Canadian pay equity act eight years after it comes into effect and every five years thereafter.

This would permit an assessment of the effect of both the initial implementation of pay equity plans and one cycle of maintenance reviews.

17.21 **The Task Force recommends that the new federal pay equity legislation provide for a comprehensive parliamentary review of the provisions and operation of the legislation, including the effect of those provisions eight years after the legislation comes into effect and every five years thereafter.**

Conclusion

In this chapter, we have outlined a specialized and autonomous system for dealing with pay equity. For reasons we have explained, including the technical nature of pay equity and the specialized expertise which is necessary to implement it as a policy, we are recommending this form of administrative structure. We think that the agencies we have described would have the ability to support the achievement of pay equity by carrying out a full range of functions.

We do not deny that there is a need to co-ordinate and dovetail the mechanisms put in place in pursuit of the objective of pay equity with the mechanisms used by other organizations, agencies and governmental units dealing with issues closely related to pay equity, such as human rights, employment equity and collective bargaining. These would include the Canadian Human Rights Commission, the Canadian Human Rights Tribunal, the Labour Program of Human Resources Development Canada, and human rights and pay equity agencies at the provincial level.

Our conclusion, however, is that the task of eliminating wage discrimination can best be carried out under the auspices of oversight agencies which have a discrete and specialized mandate, and which can focus distinct expertise on the achievement of pay equity.

List of Recommendations

Chapter 5 – The Recommended Model

5.1 The Task Force recommends that Parliament enact new stand-alone, proactive pay equity legislation in order that Canada can more effectively meet its international obligations and domestic commitments, and that such legislation be characterized as human rights legislation.

5.2 The Task Force recommends that the new federal pay equity leglisation be framed in a comprehensive way which will cover as many employees and as many types of employment relationships as possible.

5.3 The Task Force recommends that the new federal pay equity legislation contain clear standards and criteria for the achievement of pay equity.

5.4 The Task Force recommends that the new federal pay equity legislation provide for flexibility in the application of the standards, and that it require that all standards, tools, methods and processes used in the achievement of pay equity be free of gender bias.

5.5 The Task Force recommends that the new federal pay equity legislation provide for the involvement of both unionized and non-unionized employees in the process of achieving and monitoring pay equity.

5.6 The Task Force recommends that the implementation of the new federal pay equity legislation be supported with adequate human and financial resources, so that participants in the pay equity process have access to advice, information advice and training.

5.7 The Task Force recommends that the new federal pay equity legislation include provision for maintenance and follow-up of pay equity plans.

5.8 The Task Force recommends that specialized oversight agencies be established to administer and interpret the new federal pay equity legislation.

5.9 The Task Force recommends that the new federal pay equity legislation include a purpose clause and/or preamble to provide a context and interpretive framework for the legislation.

5.10 The Task Force recommends that the new federal pay equity legislation contain specific provisions establishing a process by which complaints may be made to the proposed Canadian Pay Equity Commission, described in Chapter 17, concerning violations of the principle of equal pay for equal work on the grounds of gender, membership in a visible minority, Aboriginal ancestry or disability.

5.11 The Task Force recommends that any new federal legislative scheme directed at the issue of pay equity should be carefully considered in relation to other policies and practices aimed at the elimination of discrimination based on gender.

5.12 The Task Force recommends that all federal legislation, policies and practices with the objective of ensuring equality in the labour market and the workplace be consistent with the new federal pay equity legislation.

Chapter 6 – Scope of Application

6.1 The Task Force recommends that the new federal pay equity legislation should cover all federally-regulated employers in both the public and private sectors, including the Parliament of Canada, and that the requirements of the legislation be imposed on federal contractors through the Federal Contractors Program.

6.2 The Task Force recommends that :

- ➤ the provisions of new federal pay equity legislation setting out the requirements for establishing pay equity plans apply to all federally-regulated employers with fifteen employees or more; and
- ➤ the provisions of new federal pay equity legislation apply to federal contractors who are covered by the Federal Contractors Program.

6.3 The Task Force recommends that the new federal pay equity legislation provide that the pay equity oversight agencies described in Chapter 17 of this report be empowered to develop job comparison and wage adjustment methodologies and criteria suitable for employers with fewer than fifteen employees, and to use these to assist small employers to eliminate discriminatory wage practices.

6.4 The Task Force recommends that the new federal pay equity legislation cover all employees in the federal jurisdiction, including part-time, casual, seasonal and temporary workers, employees of Parliament, and employees of federal contractors covered by the Federal Contractors Program.

6.5 The Task Force recommends that the new federal pay equity legislation:

- ➤ cover contractors whose economic dependence on an employer makes it appropriate to treat them as employees;
- ➤ empower the pay equity oversight agencies described in Chapter 17 to look behind the technical forms of contractual relationships for the purpose of identifying relationships characterized by economic dependence, and be empowered to develop criteria for making this determination, which would include, though not be limited to:
  - the degree to which a contractor works for a single client;
  - the degree to which the principal maintains control over the work; and
  - the relationship of a contractor with his or her own employees; and
- ➤ provide that contractor-employees may be grouped or represented so that they may participate in the formulation of pay equity plans.

6.6 The Task Force recommends that the new federal pay equity legislation empower pay equity oversight agencies to identify either a labour broker or the principal as the employer for pay equity purposes, and that, in making this determination, the requirements of the legislation, including the availability of male comparators, be the primary basis for designating the labour broker or the principal.

6.7 The Task Force recommends that the new federal pay equity legislation:

- provide for the continuation of pay equity obligations when the disposition of all or part of a business or structural change occurs which results in the emergence of a new entity as employer, and that the legislation include a clear definition of the kinds of change which might affect the application of the legislation or of pay equity plans. The kinds of change included in this definition should include, but not be limited to, sale, lease, transfer, merger of businesses, foreclosure under a mortgage, or significant contracting out;
- provide clear criteria, including those set out in Chapter 12 of this report, for the application of the legislation, and the continuation or modification of pay equity plans when a successorship occurs, and that these criteria include standards for according priority to a pay equity plan where more than one is in existence; and
- contain a section providing for the application of the legislation to employers who move from provincial jurisdiction to federal jurisdiction, and provide clear criteria for the assessment of pay equity plans established under proactive provincial pay equity legislation by these employers, and by federal contractors covered by the Federal Contractors Program.

6.8 The Task Force recommends that the new federal pay equity legislation provide coverage against wage discrimination with respect to members of designated groups, where these groups are predominant in a job class according to the criteria described in Chapter 9, and that the federal government carry out the additional investigation and research necessary to broaden our understanding of the reasons for systemic patterns of wage discrimination against visible minorities, Aboriginal people and persons with disabilities, with a view to taking action, under a pay equity statute or otherwise, which can correct such discrimination.

6.9 The Task Force recommends that the provisions of the new federal pay equity legislation which recognize that employees are entitled to equal pay for equal work, and which establish a process for eliminating this form of wage discrimination, should apply to members of visible minorities, Aboriginal people and persons with disabilities as well as women.

6.10 The Task Force recommends that the new federal pay equity legislation provide that the normal definition of the pay equity unit be based on all of the operations of a single employer, and that each employer be required to formulate a single pay equity plan covering all of its operations.

6.11 The Task Force recommends that the new federal pay equity legislation provide that the pay equity oversight agencies described in Chapter 17 be empowered to approve modifications of the definition of the pay equity unit in special circumstances which would include the following, where this configuration is not inconsistent with the effective implementation of the legislation:

- ➤ a corporate structure where entities which are related operate *de facto* as separate employers;
- ➤ operations by an employer which are in separate and distinct industrial sectors;
- ➤ operations of an employer which are carried out in different regions of the country where there are differing economic environments; and
- ➤ situations where pay equity legislation could be applied more effectively if related employers were treated as a single pay equity unit.

Recommendation 6.11

Dissenting recommendation by Professor Marie-Thérèse Chicha, Member, Pay Equity Task Force.

I fully endorse the principle that employers should have a single pay equity plan to cover all employees. Exceptions from this principle, as we indicate in our Report, must be narrowly construed. Nevertheless, I am proposing an additional recommendation that extends the same rights to employee representatives as those given to employers under Recommendation 6.12.

This additional two-part recommendation reads as follows:

6.11a The pay equity oversight agencies described in Chapter 17 will have the mandate to authorize the establishment of separate pay equity plans within an employer's operations in the following instances:

- ➤ **at the request of a certified employee association on behalf of the employees it represents; and**
- ➤ **at the request of representatives of a non-unionized employee organization on behalf of the employees they represent.**

6.11b The oversight agencies must issue clear guidelines outlining the criteria that would justify the establishment of separate pay equity plans.

6.12 The Task Force recommends that the new federal pay equity legislation provide for the approval of sectoral pay equity committees by the oversight agencies described in Chapter 17.

6.13 The Task Force recommends that the new federal pay equity legislation specify how it is to apply to the territories, and define the circumstances in which the federal government would vacate the field in favour of territorial legislation.

Chapter 7 – The Pay Equity Plan

7.1 The Task Force recommends that the new federal pay equity legislation specify that the pay equity plan include the following steps:

1. identification of the jobs to be compared and their gender predominance;
2. development of the evaluation method, tools and process;
3. evaluation of gender predominant jobs using the selected method, tools and process;
4. determination of total remuneration for those jobs, the wage gaps and any necessary salary adjustments; and
5. determination of the terms of payment for salary adjustments.

Chapter 8 – Employee Participation

8.1 The Task Force recommends that the new federal pay equity legislation provide that all employees, whether unionized or not, have the right to participate in pay equity implementation and maintenance.

8.2 The Task Force recommends that the new federal pay equity legislation provide that the employer is responsible for ensuring that pay equity implementation and maintenance are free of gender discrimination.

8.3 The Task Force recommends that the new federal pay equity legislation provide that every employer is obligated to create a pay equity committee on which all employees are represented.

8.4 The Task Force recommends that the new federal pay equity legislation provide that the pay equity committee is mandated to develop the pay equity plan for the employees represented on the committee and to maintain the results of the plan's application.

8.5 The Task Force recommends that the new federal pay equity legislation provide that at least half the employee representatives on the pay equity committee should be female workers from predominantly female job classes.

8.6 The Task Force recommends that the new federal pay equity legislation provide that employees representatives must make up at least two thirds of the pay equity committee membership.

8.7 The Task Force recommends that the new federal pay equity legislation provide that:

- ➤ unions designate their representatives on the pay equity committee; and
- ➤ non-unionized employees elect their representatives on the pay equity committee by secret ballot and the employer is obligated to provide them with the means to do so.

8.8 The Task Force recommends that the new federal pay equity legislation provide that the pay equity committee holds decision-making authority with respect to the content of the pay equity plan as well as the maintenance of results.

8.9 The Task Force recommends that the new federal pay equity legislation provide that where employer and employee representatives on the pay equity committee disagree, the dispute is submitted to the proposed Canadian Pay Equity Commission, described in Chapter 17. The proposed Commission must assist the parties to resolve the dispute, failing which the Commission makes a decision.

8.10 The Task Force recommends that the new federal pay equity legislation provide that where employee representatives on the pay equity committee disagree, the dispute is submitted to the proposed Canadian Pay Equity Commission, described in Chapter 17. The Commission must assist the parties to resolve the dispute, failing which the Commission makes a decision.

8.11 The Task Force recommends that the new federal pay equity legislation provide that the employer must post any document, notice or decision by the proposed Canadian Pay Equity Commission or the proposed Canadian Pay Equity Hearings Tribunal, described in Chapter 17, by using any means necessary to ensure that all employees can effectively access this information.

8.12 The Task Force recommends that the new federal pay equity legislation provide that:

- after the second, third and fifth steps, the employer must post the results of the deliberations of the pay equity committee in a format consistent with guidelines issued by the proposed Canadian Pay Equity Commission, described in Chapter 17;
- employees affected by the plan be allowed eight weeks after each posting to make comments and request modifications. The pay equity committee will have four weeks to respond with a new posting including, where applicable, the modified plan; and
- employees may appeal decisions made by the committee by filing a complaint with the proposed Canadian Pay Equity Commission at any stage of the process, based on the grounds set out in Chapter 17, or on retaliatory action taken against them.

Recommendation 8.12

Dissenting recommendation by Professor Marie-Thérèse Chicha, Member, Pay Equity Task Force.

Recommendation 8.12, bullet 3, essentially limits the permissible grounds for employee complaints to bad faith on the part of pay equity committee members or to reprisals against an employee. However, as the pay equity committee conducts its work, it may happen that an employee thinks his/her right to pay equity has been infringed, for instance because the members are using inadequate methods or tools (even if in good faith), or because of some similar reason.

Suppose that the employee has provided comments to the committee members in response to a posting, but the committee members have not changed their decision or offered convincing explanations. In such cases, it is essential that the employee be able to file a complaint with the oversight agency.

One might think that a very substantial number of complaints could be filed with the oversight agencies as a result of this recommendation. I do not think so, since we have made very extensive recommendations in our Report regarding the role of the oversight agencies with respect to education, training, information and employer obligations. Consequently, if these recommendations are followed, I believe that there will be an adequate level of compliance with the legislation in the majority of cases.

This does not preclude the fact that in some establishments, certain elements of a pay equity plan can have a negative impact on the employee's right to pay equity. It is essential to provide these employees with accessible recourse, and not subject them to the high standard of determining whether or not there was an act of bad faith on the part of one or more members of the pay equity committee.

Furthermore, one must recognize that a pay equity committee—being both judge and interested party—may find itself in a conflict of interest situation when an employee requests changes to a pay equity plan.

It is therefore critical that employees be able to file their complaints with an independent body such as the oversight agencies proposed in our Report. These agencies must issue clear guidelines explaining the process for filing complaints.

This is why I recommend that bullet three of Recommendation 8.12 be replaced by the following:

- **employees who are dissatisfied with the response of the pay equity committee have the right to file a complaint with the proposed Canadian Pay Equity Commission at every step of the process.**

8.13 The Task Force recommends that the new federal pay equity legislation provide that an employer must send copies of all postings, as posted, to the proposed Canadian Pay Equity Commission, described in Chapter 17.

8.14 The Task Force recommends that the new federal pay equity legislation provide that the time employees spend on pay equity committee work and on other activities needed to achieve pay equity is considered work time and thus be paid accordingly.

8.15 The Task Force recommends that the new federal pay equity legislation require the employer to provide members of the pay equity committee with the necessary training to establish a pay equity plan and to maintain its results. The training should also allow committee members to develop both technical skills and the ability to identify and eliminate discrimination. The employer should also provide information and facilitate training to permit all managers and employees to understand the pay equity process and the pay equity plan.

8.16 The Task Force recommends that the new federal pay equity legislation indicate that the employer must provide committee members with the information required to establish a pay equity plan and to maintain pay equity results. It must also facilitate the collection of data necessary for the committee's work. In return, committee members will be obligated to maintain the confidentiality of such information with sanctions for breach of confidentiality to be determined by the oversight agencies described in Chapter 17.

Chapter 9 – Predominance in Job Classes

9.1 The Task Force recommends that the new federal pay equity legislation include a provision which determines a job class by the following four criteria:

- similar duties or responsibilities;
- similar qualifications;
- the same rate of pay or the same pay scale; and
- similar access to total remuneration and benefits with monetary value.

9.2 The Task Force recommends that the new federal pay equity legislation include a provision which defines a female-dominated job class as a job class where at least 60 percent of the employees are women and a male-dominated job class as a job class where at least 60 percent of the employees in that job class are men.

9.3 The Task Force recommends that the new federal pay equity legislation include a provision which indicates that a job class may be considered female- or male-dominated when the gap between the rate of representation for women or men in that job class and their rate of representation in the workforce covered by a pay equity plan is deemed significant.

9.4 The Task Force recommends that the new federal pay equity legislation indicate that historical incumbency in a job class may be taken into account to determine gender predominance for that job class.

9.5 The Task Force recommends that the new federal pay equity legislation indicate that a job class may be deemed female- or male-dominated when it is commonly associated with women or men due to occupational stereotype.

9.6 The Task Force recommends that the new federal pay equity legislation indicate that a job class will be treated as a female-dominated job class when the combined representation of employees of a designated group—visible minorities, Aboriginal people, or persons with disabilities—and women is 60 percent or more of the employees in that job class.

Chapter 10 – Evaluating Gender Predominant Job Classes

10.1 The Task Force recommends that the new federal pay equity legislation provide that the pay equity committee must select an evaluation method that allows for equal evaluation of predominantly female and predominantly male job classes.

10.2 The Task Force recommends that the new federal pay equity legislation provide that the pay equity committee must select an evaluation method with four evaluation factors: qualifications, responsibility, effort and the conditions under which the work is performed. When defining these factors and their subfactors, the pay equity committee must explicitly include all the specific requirements of predominantly female job classes.

10.3 The Task Force recommends that the new federal pay equity legislation provide that the pay equity committee must ensure that the following elements are developed and applied without gender discrimination:

- the content of the evaluation method;
- the tools for collecting data on job classes;
- the evaluation process for job classes; and
- the weighting grid.

Chapter 11 – Estimating and Correcting Wage Gaps

11.1 The Task Force recommends that the new federal pay equity legislation define compensation for pay equity purposes as total compensation, including base pay, flexible pay and benefits with monetary value.

11.2 The Task Force recommends that the new federal pay equity legislation define pay for a job class as the maximum flat rate or the maximum pay level in a salary range for the jobs in that class.

11.3 The Task Force recommends that the new federal pay equity legislation provide that for the purposes of estimating wage gaps, flexible pay includes:

- skills-based compensation;
- plans based on individual performance, such as merit pay and bonuses; and
- plans based on group performance, such as profit sharing and sharing in productivity gains.

11.4 The Task Force recommends that the new federal pay equity legislation include a provision that indicates that benefits without monetary value include:

- paid time off, such as sick leave, personal and parental leave, holidays and statutory holidays, break and meal times, or any similar element;
- group retirement and contingency plans, such as pension funds, health or disability insurance plans, or any other group plan; and

- non-wage benefits, such as supply and maintenance of tools, uniforms or other clothing (except where such an item is required under occupational health and safety legislation or is necessary for the job), parking, meal allowances, supply of vehicles, payment of professional dues, paid educational leave, refund of tuition, reduced rate loans, or any other form of benefit.

11.5 The Task Force recommends that the new federal pay equity legislation provide that:

- in organizations of 100 or more employees, wage gaps must be estimated on an overall basis by comparing predominantly female job classes to the wage line for solely predominantly male job classes; and
- in organizations with fewer than 100 employees, wage gaps may be estimated:
    - on an overall basis, as indicated above; or
    - on an individual basis using job-to-job comparison or proportional value comparison.

11.6 The Task Force recommends that the new federal pay equity legislation provide that where a pay equity committee shows there are serious reasons why none of the methods recommended above is practicable in that organization, it may use the job-to-segment method subject to authorization by the proposed Canadian Pay Equity Commission, described in Chapter 17.

11.7 The Task Force recommends that the new federal pay equity legislation provide that a comparison method cannot be used if it excludes a predominantly female job class.

11.8 The Task Force recommends that the new federal pay equity legislation provide that wages cannot be reduced in order to achieve pay equity.

11.9 The Task Force recommends that the new federal pay equity legislation provide that where the pay structures of predominantly female job classes differ from those of equivalent predominantly male job classes, those structures must be harmonized in order to implement pay equity.

11.10 The Task Force recommends that the new federal pay equity legislation provide that:

- payment of wage adjustments shall be equal to at least 1 percent of the organization's payroll per year; and
- payment must begin as soon as the pay equity plan is completed and end at the latest three years after that date. At that time all wage adjustments must be paid in full.

11.11 The Task Force recommends that the new federal pay equity legislation provide that pay equity adjustments are considered to be part of the collective agreement.

11.12 The Task Force recommends that the new federal pay equity legislation provide that where there is no male comparator within a given pay equity plan, the comparison must be made using all the predominantly male job classes in the organization.

11.13 The Task Force recommends that the new federal pay equity legislation provide that where no male comparator exists within an organization, comparisons can be made using the proxy method.

11.14 The Task Force recommends that the new federal pay equity legislation provide that the mandate of the proposed Canadian Pay Equity Commission, described in Chapter 17, will include the authority to make regulations stipulating the methodology and steps that organizations without male comparators must follow and to provide special support to organizations that use the proxy comparison method.

Chapter 12 – Allowable Exemptions

12.1 The Task Force recommends that the new federal pay equity legislation provide that only the component of compensation which results from any allowable exemption should be eliminated from pay equity comparisons.

12.2 The Task Force recommends that the new federal pay equity legislation contain a provision making it clear that resort to any of the permitted exemptions must be justified in precise terms by an employer.

12.3 The Task Force recommends that the new federal pay equity legislation provide that the aspects of compensation attributable to the following factors be exempted from the calculation of compensation for the purposes of pay equity analysis:

- ➤ payments based on seniority where the seniority system is not inherently discriminatory and is not applied in a discriminatory way;
- ➤ the portion of a wage rate which is "red-circled" in one of the following circumstances, provided that the rate is only red-circled until the wage rate appropriate to the job under the pay equity plan is the equivalent of the red-circled rate:
  - re-evaluation and downgrading of the position of an employee as a result of the pay equity process;
  - a rehabilitation assignment, where an employer pays to an employee wages that are higher than justified by the value of the work performed by that employee during recuperation of limited duration from injury or illness; and

   - a demotion procedure or gradual reduction of wages, where the employer reassigns an employee to a position at a lower level for reseasons such as the increasing complexity of the job or the impaired health or partial disability of the employee, or as the result of an internal labour force surplus that necessitates the assignment; and

- ➤ a shortage of skilled labour, this exemption to be worded in terms which make it clear that employers must show how this wage premium is linked to their specific problems of recruitment and retention, and how it is intended to phase out the additional payments when the shortage ceases; and
- ➤ payments to employees which are specifically attributable to geographic factors, subject to a requirement that the employer be able to justify specific regional distinctions, and that the payment system is free of gender bias.

Chapter 13 – Maintenance of Pay Equity

13.1 The Task Force recommends that the new federal pay equity legislation include a provision indicating that once the pay equity plan has been implemented, the employer is obligated to maintain pay equity and ensure that the maintenance process is gender-neutral and inclusive.

13.2 The Task Force recommends that the new federal pay equity legislation provide that a trade union has an obligation, insofar as it has the power to do so, to see that pay equity is maintained with respect to its members when renewing a collective agreement or negotiating a new collective agreement.

13.3 The Task Force recommends that the new federal pay equity legislation provide that once the pay equity plan is implemented, the pay equity committee is responsible for ensuring that pay equity is maintained.

13.4 The Task Force recommends that the new federal pay equity legislation provide that the pay equity committee must use the same methods, tools and process as were used to develop the pay equity plan to ensure the maintenance of pay equity. If those methods and tools or that process are no longer effective in maintaining pay equity, they must be modified accordingly.

13.5 The Task Force recommends that the new federal pay equity legislation provide that the employer must post the results of pay equity maintenance reviews and send a copy of the posting to the proposed Canadian Pay Equity Commission, described in Chapter 17, at least every three years.

13.6 The Task Force recommends that the new federal pay equity legislation provide that when an organization is sold or disposed of in whole or in part, the new employer is bound by the obligations of the pay equity plan established by the previous employer.

13.7 The Task Force recommends that the new federal pay equity legislation provide that if the pay equity plan no longer complies with the legislation, the employer must modify the plan in accordance with the provisions governing the development of a pay equity plan, including those governing the pay equity committee.

13.8 The Task Force recommends that the new federal pay equity legislation provide that payment of salary adjustments for maintenance purposes are owed as from the date at which the change occurred and cannot be spread out. Employers that fail to comply with this obligation will be liable to fines.

Chapter 14 – Enforcement

14.1 The Task Force recommends that the new federal pay equity legislation provide that the proposed Canadian Pay Equity Commission, described in Chapter 17, be given the power to:

- receive complaints from employees, employee representatives or employers alleging infractions of the legislation;
- issue compliance orders aimed at supporting the achievement of pay equity;
- investigate complaints, supported by any necessary power to summon documents or other information and to enter premises; and
- conduct systematic audits of compliance with the pay equity legislation.

14.2 The Task Force recommends that the new federal pay equity legislation provide that the proposed Canadian Pay Equity Hearings Tribunal described in Chapter 17 be given authority to formulate a broad range of remedial measures aimed at assisting and directing employers and employee representatives to achieve compliance with the statute.

14.3 The Task Force recommends that the new federal pay equity legislation provide authority to the proposed Canadian Pay Equity Hearings Tribunal, described in Chapter 17, to award compensation for acts of intimidation or reprisal by employers, employees, employer organizations or employee organizations against employees or others who are exercising their rights or carrying out responsibilities under the legislation.

14.4 The Task Force recommends that the proposed Canadian Pay Equity Hearings Tribunal, described in Chapter 17, be given the authority to:

- order that a violation of the statute be discontinued and not repeated;
- order compensation where harm to individuals or legal persons can be established;
- order the disclosure and publication of information; and
- award costs in appropriate and limited circumstances.

14.5 The Task Force recommends that the new federal pay equity legislation provide that pay equity adjudicators be empowered to devise flexible and innovative remedies in the interpretation and application of pay equity plans.

14.6 The Task Force recommends that the new federal pay equity legislation provide that violations of the statute be defined as offences, and that prosecution and the imposition of penal sanctions be a remedy available under new pay equity legislation.

14.7 The Task Force recommends that the new federal pay equity legislation provide for the filing and enforcement of orders through the Federal Court.

Chapter 15 – Timelines and Transition

15.1 The Task Force recommends that the new federal pay equity legislation provide that:

- ➤ all employers must complete their pay equity plans in a specified period of three years, this period to begin one year after the legislation comes into force;
- ➤ each adjustment should be at least 1% of payroll, with the final adjustment the equivalent of any remainder;
- ➤ pay equity adjustments may be phased in over a period not to exceed three years, the first adjustment to be made at the time the employer posts the final pay equity plan showing the schedule of adjustments;
- ➤ the oversight agencies described in Chapter 17 may permit an employer up to two further periods of one additional year for the payment of wage adjustments if the employer can demonstrate that more rapid payment will cause undue hardship; and
- ➤ employers governed by the Federal Contractors Program are required to adhere to the same timetable, beginning with the date their contract is entered into.

15.2 The Task Force recommends that the new federal pay equity legislation provide oversight agencies with additional resources for the period specified in the legislation for the formulation of pay equity plans by all employers.

15.3 The Task Force recommends that the new federal pay equity legislation require that employers commence the process of preparing a pay equity plan no later than one year after the legislation comes into force, that they be required to report annually on their progress towards formulating a pay equity plan during the period specified in the legislation for this phase, and that they also be required to report annually during the period when wage adjustments are being made. These reports may take the form of any posting which the employer is required to make at any stage of the process.

Recommendation 15.3

Dissenting recommendation by Professor Marie-Thérèse Chicha, Member, Pay Equity Task Force.

In my opinion, if the oversight agencies are to work effectively, it is imperative that they receive reports on the pay equity plans and on the maintenance of the results. The reports to be submitted to the oversight agencies consist of the three successive postings required during the development of the pay equity plan as well as the postings required during the maintenance of pay equity. In my opinion, an obligation which requires employers to remit annual reports during the four years it may take to develop the pay equity plan and during the three years over which the pay adjustments are made may prove burdensome for both employers and the proposed Canadian Pay Equity Commission.

This is why I recommend changing Recommendation 15.3, as follows:

All employers are required to begin developing their pay equity plans within a year of the coming into effect of the proposed legislation. All employers are required to send the proposed Canadian Pay Equity Commission all the postings provided for by the legislation, as recommended in Chapters 8 and 13, as soon as these postings are displayed in their establishments.

15.4 The Task Force recommends that the new federal pay equity legislation require that an employer review the pay equity plan at a prescribed interval of three years, communicate the results of this review to employees with an opportunity for their response, and report to the proposed Canadian Pay Equity Commission, described in Chapter 17, on the results of this review; and that a report concerning a review triggered by a complaint or a change in circumstances be accepted as meeting this requirement.

15.5 The Task Force recommends that the new federal pay equity legislation provide that where there has been a decision of the Canadian Human Rights Tribunal concerning any issue, or a final disposition of an issue by the Federal Court of Appeal or the Supreme Court of Canada, the disposition of that issue should be accepted by the new proposed pay equity oversight agencies, described in chapter 17, insofar as it is consistent with the provisions of the new legislation; where, however, the ruling or decision concerns only part of the workforce covered by a pay equity plan, it should be viewed as authoritative only for aspects of the plan to which it is directly relevant.

15.6 The Task Force recommends that the new federal pay equity legislation provide that in the event a complaint is under investigation by the Canadian Human Rights Commission, this investigation proceed to a conclusion. In the event there is a recommendation to refer the complaint for adjudication, it would be referred to the proposed Canadian Pay Equity Hearings Tribunal, described in Chapter 17.

Chapter 16 – Pay Equity and Collective Bargaining

16.1 The Task Force recommends that the new federal pay equity legislation provide that the process for achieving pay equity be separated from the process for negotiating collective agreements.

16.2 The Task Force recommends that the new federal pay equity legislation impose a responsibility on employers, employees and employee representatives to deal in good faith and without discrimination in the course of the pay equity process, including all deliberations of the pay equity committee.

16.3 The Task Force recommends that the new federal pay equity legislation require employee representatives to represent employees fairly, conscientiously and without discrimination in the pay equity process.

Recommendations 16.2 and 16.3

Dissenting recommendation by Professor Marie-Thérèse Chicha, Member, Pay Equity Task Force.

In my opinion, Recommendation 16.2 includes 16.3 and Recommendation 16.3 should be removed. The addition of Recommendation 16.3 suggests that employee representatives shall be subject to a double obligation to represent their members conscientiously and without discrimination.

I therefore recommend removing Recommendation 16.3 and keeping Recommendation 16.2.

Chapter 17 – Oversight Agencies

17.1 The Task Force recommends that the new federal pay equity legislation and the structures which are put in place to administer it attach a high priority to measures which will support compliance with the legislation.

17.2 The Task Force recommends that the new federal pay equity legislation provide adequate financial and human resources to oversight agencies to support the achievement of pay equity within a reasonable period of time, and that the government continue to allocate sufficient resources for the administration of pay equity legislation.

17.3 The Task Force recommends that the new federal pay equity legislation provide for specialized stand-alone oversight agencies with a mandate associated exclusively with pay equity.

17.4 The Task Force recommends that the new federal pay equity legislation provide that the mandate of the pay equity oversight agencies include providing public education and information.

17.5 The Task Force recommends that the new federal pay equity legislation provide that the mandate of the pay equity oversight agencies include providing specialized information and training to employers and employees directly affected by the legislation.

17.6 The Task Force recommends that the new federal pay equity legislation provide that pay equity oversight agencies have access to sources of independent and accurate technical information about employment and compensation in the federally-regulated public and private sectors.

17.7 The Task Force recommends that the new federal pay equity legislation provide that the mandate of the pay equity oversight agencies include carrying out or commissioning research on issues related to the legislation.

17.8 The Task Force recommends that the new federal pay equity legislation provide that the mandate of the pay equity oversight agencies include the provision of advice and technical assistance to parties in reviewing and adjusting their compensation systems in the process of achieving and maintaining pay equity.

17.9 The Task Force recommends that the new federal pay equity legislation provide that the mandate of the pay equity oversight agencies include the investigation of complaints or disputes.

17.10 The Task Force recommends that the new federal pay equity legislation provide that the mandate of the pay equity oversight agencies include mediation and other forms of dispute resolution.

17.11 The Task Force recommends that the new federal pay equity legislation provide that the mandate of a pay equity oversight agency include the power to issue compliance orders.

17.12 The Task Force recommends that the new federal pay equity legislation provide for advocacy services for unrepresented workers.

17.13 The Task Force recommends that the new federal pay equity legislation provide for the creation of specialized and independent pay equity agencies, with their adjudicative functions protected by a strong privative clause.

17.14 The Task Force recommends that the new federal pay equity legislation provide that the mandate of the pay equity oversight agencies include a monitoring and audit function.

17.15 The Task Force recommends that the new federal pay equity legislation provide a rule- and policy-making power for the oversight agencies, and that this include the power to make regulations.

17.16 The Task Force recommends that the new federal pay equity legislation provide that the mandate of the adjudicative oversight agency include authority to entertain appeals from compliance orders of review officers, and from the decisions of pay equity adjudicators.

17.17 The Task Force recommends that the new federal pay equity legislation provide that the oversight agencies have adequate remedial and enforcement powers to ensure that the goals of the legislation can be met.

17.18 In order to implement the preceding recommenations, the Task Force recommends that the new federal pay equity legislation provide for the establishment of an independent Canadian Pay Equity Commission composed of members with expertise in pay equity, with a mandate including the following functions:

- public education and promotion of pay equity issues;
- provision of advice and technical assistance;
- investigation and fact finding;
- dispute resolution;
- regulation and monitoring, including an audit function; and
- issuing compliance orders;
- rule making and policy making; and
- enforcement measures.

17.19 In order to implement the preceding recommendations, the Task Force recommends that the new federal pay equity legislation provide for the establishment of a specialized, independent Canadian Pay Equity Hearings Tribunal, with a mandate which would include the following functions:

- Investigation;
- dispute resolution;
- rule making and policy making;
- education and information concerning its own operation; and
- adjudication, including adjudication of appeals of compliance orders from the Canadian Pay Equity Commission and from the decisions of pay equity adjudicators.

17.20 The Task Force recommends that the new federal pay equity legislation provide for the establishment of a system of pay equity adjudicators to carry out the following functions:

- the interpretation of disputed terms of pay equity plans;
- the application of the legislation to changes in the circumstances in the workplace which gave rise to the pay equity plan; and
- the resolution of disputes between the parties to a pay equity plan over the application of the terms of that plan.

17.21 The Task Force recommends that the new federal pay equity legislation provide for a comprehensive parliamentary review of the provisions and operation of the legislation, including the effect of those provisions eight years after the legislation comes into effect and every five years thereafter.

Appendix A – Pay Equity Secretariat

This report would not have been possible without the hard work and dedication of all those who worked for the Pay Equity Task Force. We would like to specifically thank **Gwenn Hughes**, Executive Secretary, as well as:

Bellehumeur, Gisèle, Copy Editor
Burnett, Katy, Director of Consultations
Céré, Étienne, Copy Editor
Coulas, Patricia, Office Manager
Dewitt, Dawn, Research Student
Ferguson, Heather, Copy Editor
Guénette, Caroline, Administrative Assistant
Hunter, Chris, Senior Policy Analyst
Islam, Martin, Research Student
Juneja, Vandana, Research Student
Keith, Fiona, Research Coordinator
Kroes, Marianne, Research Analyst
Leclerc-Sirois, Jean-François, Copy Editor
MacPherson, Elizabeth, Executive Director, Consultations
Newman, Dwight, Research Assistant
Roper, Pam, Research Assistant
Rowlatt, Linnéa, Research Assistant
St-Denis, Sylvie, Executive Assistant
Won, Norma, Legal Counsel

Appendix B – Terms of Reference

Review of section 11 of the *Canadian Human Rights Act and the Equal Wages Guidelines, 1986*

Phase II

On October 29, 1999, the federal government announced its intention to review section 11 of the *Canadian Human Rights Act* with a view to ensuring clarity in the way pay equity is implemented in the modern workplace. With that overall objective in mind and taking into account the following considerations:

- Canada ratified the International Labour Organization Convention 100 in 1972, thereby giving effect to the principle of equal pay for work of equal value, and is party to and has ratified other international human rights agreements which further support this principle;
- the principle of equal pay for work of equal value was first enacted at the federal level in Canada when the *Canadian Human Rights Act* received Royal Assent in 1977;
- section 11 of the *Canadian Human Rights Act*, which makes it a discriminatory practice to pay men and women differently for performing work of equal value, has not been amended or subjected to a comprehensive review since receiving Royal Assent in 1977;
- some provincial jurisdictions have adopted pay equity legislation which takes a more proactive approach to addressing gender-based wage discrimination and places positive obligations on both employers and employee organizations or representatives to ensure that this principle is implemented; and
- many observers, including the Canadian Human Rights Commission, favour an alternative to the current complaint-based approach to implementing the principle of equal pay for work of equal value.

The Minister of Labour and the Minister of Justice, hereby appoint a task force, composed of three members to conduct a comprehensive review of the current equal pay provisions of the *Canadian Human Rights Act*, (s.11) as well as the *Equal Wages Guidelines, 1986.*

Without limiting the scope of the review, the Task Force will:

- conduct a comparative review and analysis of the equal pay for work of equal value and/or pay equity experiences in provincial and territorial jurisdictions in Canada, as well as other relevant international experience;
- undertake consultations with relevant individuals and organizations, including but not limited to employer and employee organizations, groups representing the interests of women workers and experts in the pay equity field;

- examine and assess various models and best practices for implementing the principle of equal pay for work of equal value, including the existing complaint-based model and other more proactive models and enforcement mechanisms;
- examine and assess the existing legislative and administrative frameworks, and consider the implications of those frameworks, and their consonance with other related legislative provisions and administrative structures;
- examine and assess job evaluation and wage adjustment methodologies;
- consider how the principle of equal pay for work of equal value can best operate within the context of collective bargaining, competitive labour markets and internal wage relativities;
- develop a series of options and recommendations with the objective of improving the legislative framework for dealing with pay equity matters.

Mandate of the Pay Equity Task Force

The Task Force is composed of three Members:

1. Beth Bilson, Chair
2. Marie-Thérèse Chicha, Member
3. Scott MacCrimmon, Member

The appointment of the Task Force Members will terminate when the Task Force has completed its Report to the Ministers of Justice and Labour by March 31, 2003 or earlier, if possible. The Task Force Members report to and are accountable to the Minister of Justice and the Minister of Labour.

The Task Force will operate at arms length from the Government. It will be supported by a secretariat, which will function under the direction of the Chair of the Task Force in an administrative capacity.

The Task Force will hold consultations with the public, the Canadian Human Rights Commission, employers, unions, equality seeking groups, non-governmental organizations, government departments, commissions, Crown Corporations, agencies and other interested members of the public.

The Task Force will submit a report to the Ministers of Justice and Labour with recommendations for improving section 11 of the Canadian Human Rights Act by March 31, 2003 or earlier, if possible.

Appendix C – *Canadian Human Rights Act*, R.S. 1985, C. H-6

Section 11

1. It is a discriminatory practice for an employer to establish or maintain differences in wages between male and female employees employed in the same establishment who are performing work of equal value.
2. In assessing the value of work performed by employees employed in the same establishment, the criterion to be applied is the composite of the skill, effort and responsibility required in the performance of the work and the conditions under which the work is performed.
3. Separate establishments established or maintained by an employer solely or principally for the purpose of establishing or maintaining differences in wages between male and female employees shall be deemed for the purposes of this section to be the same establishment.
4. Notwithstanding subsection (1), it is not a discriminatory practice to pay to male and female employees different wages if the difference is based on a factor prescribed by guidelines, issued by the Canadian Human Rights Commission pursuant to subsection 27(2), to be a reasonable factor that justifies the difference.
5. For greater certainty, sex does not constitute a reasonable factor justifying a difference in wages.
6. An employer shall not reduce wages in order to eliminate a discriminatory practice described in this section.
7. For the purposes of this section, "wages" means any form of remuneration payable for work performed by an individual and includes
   a. salaries, commissions, vacation pay, dismissal wages and bonuses;
   b. reasonable value for board, rent, housing and lodging;
   c. payments in kind;
   d. employer contributions to pension funds or plans, long-term disability plans and all forms of health insurance plans; and
   e. any other advantage received directly or indirectly from the individual's employer.

Appendix D – *Equal Wages Guidelines, 1986*
SOR/86-1082

GUIDELINES RESPECTING THE APPLICATION OF SECTION 11 OF THE CANADIAN HUMAN RIGHTS ACT AND PRESCRIBING FACTORS JUSTIFYING DIFFERENT WAGES FOR WORK OF EQUAL VALUE

SHORT TITLE

1. These Guidelines may be cited as the *Equal Wages Guidelines, 1986.*

INTERPRETATION

2. In these Guidelines, "Act" means the *Canadian Human Rights Act. (Loi)*

ASSESSMENT OF VALUE

Skill

3. For the purposes of subsection 11(2) of the Act, intellectual and physical qualifications acquired by experience, training, education or natural ability shall be considered in assessing the skill required in the performance of work.

4. The methods by which employees acquire the qualifications referred to in section 3 shall not be considered in assessing the skill of different employees.

Effort

5. For the purposes of subsection 11(2) of the Act, intellectual and physical effort shall be considered in assessing the effort required in the performance of work.

6. For the purpose of section 5, intellectual and physical effort may be compared.

Responsibility

7. For the purposes of subsection 11(2) of the Act, the extent of responsibility by the employee for technical, financial and human resources shall be considered in assessing the responsibility required in the performance of work.

Working Conditions

8. (1) For the purposes of subsection 11(2) of the Act, the physical and psychological work environments, including noise, temperature, isolation, physical danger, health hazards and stress, shall be considered in assessing the conditions under which the work is performed.

(2) For the purposes of subsection 11(2) of the Act, the requirement to work overtime or to work shifts is not to be considered in assessing working conditions where a wage, in excess of the basic wage, is paid for that overtime or shift work.

METHOD OF ASSESSMENT OF VALUE

9. Where an employer relies on a system in assessing the value of work performed by employees employed in the same establishment, that system shall be used in the investigation of any complaint alleging a difference in wages, if that system
   a. operates without any sexual bias;
   b. is capable of measuring the relative value of work of all jobs in the establishment; and
   c. assesses the skill, effort and responsibility and the working conditions determined in accordance with sections 3 to 8.

EMPLOYEES OF AN ESTABLISHMENT

10. For the purpose of section 11 of the Act, employees of an establishment include, notwithstanding any collective agreement applicable to any employees of the establishment, all employees of the employer subject to a common personnel and wage policy, whether or not such policy is administered centrally.

COMPLAINTS BY INDIVIDUALS

11. (1) Where a complaint alleging a difference in wages is filed by or on behalf of an individual who is a member of an identifiable occupational group, the composition of the group according to sex is a factor in determining whether the practice complained of is discriminatory on the ground of sex.

    (2) the case of a complaint by an individual, where at least two other employees of the establishment perform work of equal value, the weighted average wage paid to those employees shall be used to calculate the adjustment to the complainant's wages.

COMPLAINTS BY GROUPS

12. Where a complaint alleging different wages is filed by or on behalf of an identifiable occupational group, the group must be predominantly of one sex and the group to which the comparison is made must be predominantly of the other sex.
13. For the purpose of section 12, an occupational group is composed predominantly of one sex where the number of members of that sex constituted, for the year immediately preceding the day on which the complaint is filed, at least
    a. 70 per cent of the occupational group, if the group has less than 100 members;
    b. 60 per cent of the occupational group, if the group has from 100 to 500 members; and
    c. 55 percent of the occupational group; if the group has more than 500 members.
14. Where a comparison is made between the occupational group that filed a complaint alleging a difference in wages and other occupational groups, those other groups are deemed to be one group.

15. (1) Where a complaint alleging a difference in wages between an occupational group and any other occupational group is filed and a direct comparison of the value of the work performed and the wages received by employees of the occupational groups cannot be made, for the purposes of section 11 of the Act, the work performed and the wages received by the employees of each occupational group may be compared indirectly.

(2) For the purposes of comparing wages received by employees of the occupational groups referred to in subsection (1), the wage curve of the other occupational group referred to in that subsection shall be used to establish the difference in wages, if any, between the employees of the occupational group on behalf of which the complaint is made and the other occupational group.

REASONABLE FACTORS

16. For the purpose of subsection 11(3) of the Act, a difference in wages between male and female employees performing work of equal value in an establishment is justified by

a. different performance ratings, where employees are subject to a formal system of performance appraisal that has been brought to their attention;

b. seniority, where a system of remuneration that applies to the employees provides that they receive periodic increases in wages based on their length of service with the employer;

c. a re-evaluation and downgrading of the position of an employee, where the wages of that employee are temporarily fixed, or the increases in the wages of that employee are temporarily curtailed, until the wages appropriate to the downgraded position are equivalent to or higher than the wages of that employee;

d. a rehabilitation assignment, where an employer pays to an employee wages that are higher than justified by the value of the work performed by that employee during recuperation of limited duration from an injury or illness;

e. a demotion procedure, where the employer, without decreasing the employee's wages, reassigns an employee to a position at a lower level as a result of the unsatisfactory work performance of the employee caused by factors beyond the employee's control, such as the increasing complexity of the job or the impaired health or partial disability of the employee, or as a result of an internal labour force surplus that necessitates the reassignment;

f. a procedure of gradually reducing wages for any of the reasons set out in paragraph (e);

g. a temporary training position, where, for the purposes of an employee development program that is equally available to male and female employees and leads to the career advancement of the employees who take part in the program, an employee temporarily assigned to the position receives wages at a different level than an employee working in such a position on a permanent basis;

h. the existence of an internal labour shortage in a particular job classification;

   i. a reclassification of a position to a lower level, where the incumbent continues to receive wages on the scale established for the former higher classification; and

   j. regional rates of wages, where the wage scale that applies to the employees provides for different rates of wages for the same job depending on the defined geographic area of the workplace.

17. For the purpose of justifying a difference in wages on the basis of a factor set out in section 16, an employer is required to establish that the factor is applied consistently and equitably in calculating and paying the wages of all male and female employees employed in an establishment who are performing work of equal value.

18. In addition to the requirement of section 17, for the purpose of justifying a difference in wages on the basis of paragraph 16(*h*), an employer is required to establish that similar differences exist between the group of employees in the job classification affected by the shortage and another group of employees predominantly of the same sex as the group affected by the shortage, who are performing work of equal value.

19. In addition to the requirement of section 17, for the purpose of justifying a difference in wages on the basis of paragraph 16(*i*), an employer is required to establish that

   a. since the reclassification, no new employee has received wages on the scale established for the former classification; and

   b. there is a difference between the incumbents receiving wages on the scale established for the former classification and another group of employees, predominantly of the same sex as the first group, who are performing work of equal value.

Appendix E – *Canada Labour Code, Part III*, R.S. 1985, C. L-2

DIVISION III

EQUAL WAGES

182. 1) For the purposes of ascertaining whether a discriminatory practice under section 11 of the Canadian Human Rights Act is being or has been engaged in, sections 249, 250, 252, 253, 254, 255 and 264 apply, with such modifications as the circumstances require, as if this Part expressly required an employer to refrain from that discriminatory practice.

2) Where an inspector has reasonable grounds at any time for believing that an employer is engaging or has engaged in a discriminatory practice described in subsection (1), the inspector may notify the Canadian Human Rights Commission or file a complaint with that Commission under section 40 of the Canadian Human Rights Act.

R.S., c. 17 (2nd Supp), s. 9; 1976-77, c. 33, s. 66.

Appendix F – Submissions

The Task Force issued a Discussion Paper and a public call for submissions in January 2002. Limited funding was available to assist organizations and individuals to develop a submission. Criteria for funding included a demonstrated need for financial support and pay equity experience and/or expertise.

Submissions were received from the following organizations and individuals. All submissions for which we had a release were posted on the Task Force's website (www.payequityreview.gc.ca).

Alberta Federation of Labour
Alberta Union of Provincial Employees (AUPE)
Association of Classification and Organization Consultants (ACOC)
Association of Public Service Alliance Retirees (APSAR)
Benmergui, Ruben
British Columbia Federation of Labour
British Columbia Human Rights Coalition
Canadian Federation of Business and Professional Women's Clubs – BPW Canada
Canadian Association of University Teachers (CAUT)
Canadian Bankers Association (CBA)
Canadian Human Rights Commission
Canadian Labour Congress (CLC)
Canadian Nuclear Safety Commission
Canadian Telecommunications Employees' Association (CTEA)
Canadian Union of Public Employees (CUPE)
Canadian Union of Public Employees (CUPE), British Columbia
Communications, Energy and Paperworkers Union of Canada (CEP)
Communications, Energy and Paperworkers Union of Canada, Ontario Region Women's Committee (ORWC)
Confédération des syndicats nationaux (CSN)
Dokimos Inc.
Federally Regulated Employers – Transportation & Communications (FETCO)
Fédération des travailleurs et travailleuses du Québec (FTQ)
Femmes-Action
Femmes regroupées en options non traditionnelles (FRONT)
Gladstone, David
Government of the Northwest Territories
Halifax Regional Women's Committee – The Public Service Alliance of Canada (PSAC)
Hay Group Limited
Holland, Wendy – Office and Professional Employees International Union (O.P.E.I.U.)
Local 404
Irwin, Anne
Killingsworth, Mark R., Professor and Chair, Department of Economics, Rutgers University,
New Brunswick, New Jersey, and Research Economist, National Bureau of Economic Research

Link HR Systems, Inc.
National Action Committee on the Status of Women (NAC)
National Association of Women and the Law (NAWL)
National Automobile, Aerospace, Transportation and General Workers of Canada (CAW-Canada)
National Council of Women of Canada (NCWC)
New Brunswick Equal Pay Coalition
New Westminster District Labour Council
Nova Scotia Federation of Labour
Ontario Federation of Labour
Public Service Alliance of Canada (PSAC)
Public Services Alliance of Canada (PSAC) Retired
Sandoval, Corliss Annette
Smith, Beverley
Status of Women Canada (SWC)
Sunter, Alan, Consulting Statistician
Syndicat canadien des communications, de l'énergie et du papier (SCEP)
Syndicat des employés et employées professionnels-les et de bureau, Section local 434 (SEPB)
The Vancouver Board of Trade
The Professional Institute of the Public Service of Canada
Trecarten, Lew
United Steelworkers of America
Weiler, Paul, Harvard Law School
Woodhead, Kenneth

Appendix G – Consultation Process

In order to hear from as many interested individuals, equality-seeking groups, other organizations and stakeholders as possible, the Task Force used a number of mechanisms during its consultation process:

1. Formal public hearings were held across Canada in seven major cities – Halifax, Montreal, Ottawa, Toronto, Edmonton, Yellowknife and Vancouver from April to June 2002.
2. Five Multi-Stakeholder Roundtables were held in Ottawa between April and October 2002 and a Women's Group Roundtable was held in October 2002.
3. A Symposium was held on January 16 and 17, 2003, to provide a forum for the presentation and discussion of the results of the research commissioned by the Task Force.

In order to broaden participation, limited funding was available to assist those who could demonstrate financial need to participate in the consultation process.

I. FORMAL PUBLIC HEARINGS

Ottawa, Ontario, April 15-16, 2002 and June 21, 2002

Allenby, Susan, Hay Group Limited
Boucher, Shirley, Canada Post
Brazeau, Murielle, Canadian Human Rights Commission (CHRC)
Carbonneau, Claudette, Confédération des syndicats nationaux (CSN)
Carroccetto, John, Association of Classification & Organization Consultants (ACOC)
Collins, Denise, Human Resources Development Canada (HRDC)
Dadaille, Bertin, Treasury Board Secretariat (TBS)
Daly, Mary, Watson Wyatt
Deveau, Dennis, United Steelworkers of Ameroca (USWA)
DiGiacomo, Gordon, Consultant
Earle, Mark, Canadian Human Rights Commission (CHRC)
Ethier, Gabriel, Consultant
Etienne, Marie-Jude, Human Resources Development Canada (HRDC)
Genge, Sue, Canadian Labour Congress (CLC)
Gervais, Colette, Association of Public Service Alliance Retirees (APSAR)
Giroux, Linda, Treasury Board Secretariat (TBS)
Gladstone, David
Greschuk, Nadia, Human Resources Development Canada (HRDC)
Jodoin, Carole, Syndicat des Métallos
Johnson, Philip, Hay Group Limited
Kelly, Kimberley, Canadian Human Rights Commission (CHRC)
Knight, Brenda, Canadian Telephone Employees Association
Kuijper, Tineke, Human Resources Development Canada (HRDC)
Lagueux, Diane, Student
Laildlaw-Sly, Catharine, National Council of Women of Canada

Leblanc, Raymonde, Confédération des syndicats nationaux (CSN)
Longa, Frank, RHDF 2000
Lorquet, Sébastien
Loveday, Peter, Canadian Human Rights Commission (CHRC)
McClymont, Alice, Association of Classification & Organization Consultants (ACOC)
Morgan, Peggy, Canadian Bankers Association (CBA)
Narducci, Piero, Canadian Human Rights Commission (CHRC)
Pagé, Richard, Syndicat des Métallos
Paquette, Philémon, Association of Classification & Organization Consultants (ACOC)
Parekh, Girish, Canadian Human Rights Commission (CHRC)
Payant, Chantal, CBOF (Radio-Canada)
Reid, Tom, United Steelworkers of America – Canada
Riche, Nancy, Canadian Labour Congress (CLC)
Robert, Claude, Treasury Board Secretariat (TBS)
Rumig, Tracey, Government of Northwest Territories
Sawatzky, Diane, Hay Group Limited
Simard, Danielle, Canadian Human Rights Commission (CHRC)
Whitfield, Karen, Telecommunications Workers Union (TWU)

Montréal, Québec, April 22-23, 2002

Amiot, Suzanne, Fédération des travailleurs et travailleuses du Québec (FTQ)
Aubin, Sonia, Femmes regroupées en options non-traditionnelles (FRONT)
Brouillette, Michèle, Syndicat canadien des communications, de l'énergie et du paper (SCEP)
Charbonneau, Louise, Commission canadienne des droits de la personne
Chrétien, Lise, Québec Bureau de conseil et de formation
Cirino, Maria, Syndicat des employées professionnels-les et de bureau Section Locale 434
Côté, Rosette, Commission de l'équité salariale - Québec
Dadaille, Bertin, Treasury Board Secretariat (TBS)
Delorme, Valérie, Banque Laurentienne
du Tremble, Denise, Commission de l'équité salariale - Québec
Dugré, Isabelle, Femmes regroupées en options non-traditionnelles (FRONT)
Fabers, Rania, Heenan Blaikie
Gascon, Marjolaine, Student
Gervais, Mario, Syndicat canadien de la fonction publique du Québec (CUPE)
Gingras, Carole, Fédération des travailleurs et travailleuses du Québec (FTQ)
Giroux, Sylvie, Canadian National (CN)
Grenier, Louise, Syndicat canadien des communications, de l'énergie et du paper (SCEP)
Groulx, Françoise, Syndicat des employées professionnels-les et de bureau Section Locale 434
Lapointe, Chantal
Larose, Daniel, Syndicat des employées professionnels-les et de bureau Section Locale 434
Lépine, Sylvie, Fédération des travailleurs et travailleuses du Québec (FTQ)
Léveillé, Robert, Dokimos

Perron, Daniel, Canadian Bankers Association (CBA)
Perron, Denise, Commission de l'équite salariale - Québec
Portelance, Alain, Syndicat canadien des communications, de l'énergie et du paper (SCEP)
Rinfret, Marie, Commission de l'équité salariale – Québec
Robertson, Carole, Syndicat canadien de la fonction publique du Québec (CUPE)
Roy, René, Fédération des travailleurs et travailleuses du Québec (FTQ)
Solomon, Linda, Syndicat des employées professionnels-les et de bureau Section Locale 434
Sweeney, Josée, Student
Sweeney, Lyne, Student

Yellowknife, Northwest Territories, April 29, 2002

Engren, Myrna, Public Service Alliance of Canada (PSAC)
Iyer, Nitya, Heenan Blaikie
McGregor, Fiona, Public Service Alliance of Canada (PSAC)
Pollock, Denise, Public Service Alliance of Canada (PSAC)
Roberts, Florence, Public Service Alliance of Canada (PSAC)
Shaner, Karan, Government of Northwest Territories
Woodward, Shaleen, Government of Northwest Territories

Vancouver, British Columbia, May 1st, 2002

Brennan, Regina, Public Service Alliance of Canada (PSAC)
Chalifoux, Carolyn, New Westminster District Labour Council
Ducharme, Patty, Public Service Alliance of Canada (PSAC)
Forster, Kim, Public Service Alliance of Canada (PSAC)
Jordan, Colleen, Canadian Union of Public Employees (CUPE)
Knight, Nancy, Public Service Alliance of Canada (PSAC)
Kunin, Roslyn, Laurier Institute
O'Donnell, Susan, B.C. Human Rights Coalition
Park, Dave, Vancouver Board of Trade
Schira, Angela, B.C. Federation of Labour
Seaboyer, Deb, Public Service Alliance of Canada (PSAC)
Staschuk, Jane, B.C. Federation of Labour
Thomson, Ian, Vancouver Board of Trade
Ursino, Joanne, Public Service Alliance of Canada (PSAC)
Wilson, Jean, Public Service Alliance of Canada (PSAC)

Edmonton, Alberta, May 3rd, 2002

Anderson, Ranford, Public Service Alliance of Canada (PSAC)
Barrett, Kerry, Alberta Federation of Labour
Benson, Robyn, Public Service Alliance of Canada (PSAC)
Dahliwal, Balwinder, Public Service Alliance of Canada (PSAC)
Miller, Terry, Public Service Alliance of Canada (PSAC)
Selby, Jim, Alberta Federation of Labour
Smith, Beverley
Taylor, Ruth, Public Service Alliance of Canada (PSAC)

Halifax, Nova Scotia, June 17-18, 2002

Brezet, Richard, Public Service Alliance of Canada (PSAC)
Foye, Ivy E., Nova Scotia Federation of Labour
Gannon, Carl, Human Resources Development Canada (HRDC)
Kindred, Kevin, Cox Hanson O'Reilly Matheson
McGraw, Margaret, National Action Committee on the Status of Women (NAC)
Michael, Lorraine, National Action Committee on the Status of Women (NAC)
Perron, Johanne, New Brunswick Coalition for Equal Pay
Rodgers, Michele B., Public Service Alliance of Canada (PSAC)
Scallin, Pat, Aliant
Smith Muir, Sandra, Canadian Human Rights Commission (CHRC)
Stearns, Nikki, Canadian Human Rights Commission (CHRC)
Swinemar, Mary, Public Service Alliance of Canada (PSAC)
Young, Deborah, Public Service Alliance of Canada (PSAC)

Toronto, Ontario, June 19-20, 2002

Armah, Emmanuel, Human Resources Development Canada (HRDC)
Beemer, Kim, Canadian Energy & Paperworkers Union (CEP)
Beutler, Anne, TD Bank
Brazier, Don, Federally Regulated Employers – Transportation & Communications (FETCO)
Campbell, Darla, Business & Professional Women
Carnegie, Laurette, Human Resources Development Canada (HRDC)
Carr, Joel, Canadian Energy & Paperworkers Union (CEP)
Coltrinari, Livio, Federally Regulated Employers – Transportation & Communications (FETCO)
Cromb, Marjorie, Canadian Energy & Paperworkers Union (CEP)
Dukovich, Senka, Ontario Pay Equity Commission
Gingras, Lynne, Alberta Union of Provincial Employees (AUPE)
Howell Solc, Sandi, Canadian Union of Public Employees (CUPE)
Hull, Treat, Link HR Systems, Inc.
Johns, Rocklee, Canadian Energy & Paperworkers Union (CEP)
Leamen, Nancy, Canadian Bankers Association (CBA)
Leighton, Margaret, Ontario Pay Equity Hearings Tribunal
McAllister, Heather, CIBC
McGlynn, Debbie, Heenan Blaikie
Morash, Steve, Canadian Union of Public Employees (CUPE)
Morris, Iain, William Mercer Management Consulting
Peers, Ann, Ontario Pay Equity Commission
Proulx, Danielle
Rosser, Beverley, Ontario Pay Equity Commission
Sullivan, Linda, Ontario Pay Equity Commission
Sunstrum, Andrew, Canadian Human Rights Commission (CHRC)
Tiernay, Tim, TD Bank Financial Group
Wall, Carol, Canadian Energy & Paperworkers Union (CEP)
Watson, Kristin, Bell Canada
Weeks, Sandra, Consultant

White, Emmanuel, Human Resources Development Canada (HRDC)
White, M.C., Human Resources Development Canada (HRDC)
White, Marilyne, Canadian Union of Public Employees (CUPE)
Zemmelink-Pope, Johanne

II. ROUNDTABLES – April and October 2002

1. Multi-Stakeholders

Abou-dib, Mariam, Public Service Alliance of Canada (PSAC)
Bernier, Claude, National Association of Women and the Law (NAWL)
Beutler, Ann, TD Bank
bich, geneviève, Bell Canada
Boucher, Shirley, Canada Post
Brazier, Don, Federally Regulated Employers – Transportation & Communications (FETCO)
Carbonneau, Claudette, Confédération des syndicats nationaux (CSN)
Clarke Walker, Marie, Canadian Labour Congress (CLC)
Côté, Andrée, National Association of Women and the Law (NAWL)
de Aguayo, Jacquie, Public Service Alliance of Canada (PSAC)
DesLauriers, Jean-François, Public Service Alliance of Canada (PSAC)
Dreher, Dale, Canadian Bankers Association (CBA)
Engelmann, Peter, Engelmann Gottheil
Genge, Sue, Canadian Labour Congress (CLC)
Gingras, Carole, Fédération des travailleurs et travailleuses du Québec (FTQ)
Giroux, Linda, Treasury Board Secretariat (TBS)
Hallé, Ghislain, Confédération des syndicats nationaux (CSN)
Hélie, Roselyne, Treasury Board Secretariat (TBS)
Howell-Solc, Sandi, Canadian Union of Public Employees (CUPE)
Jaekl, Margaret, Public Service Alliance of Canada (PSAC)
Jodoin, Carol, United Steelworkers of America (USWA)
Jones, Chris, Public Service Alliance of Canada (PSAC)
Lang, John, Canadian Autoworker Union (CAW)
Lapointe, Natalie, United Steelworkers of America (USWA)
Laporte, Louise, Public Service Alliance of Canada (PSAC)
Laurendeau, Hélène, Treasury Board Secretariat (TBS)
Leamen, Nancy, Canadian Bankers Association (CBA)
Leblanc, Raymonde, Confédération des syndicats nationaux (CSN)
Lépine, Sylvie, Fédération des travailleurs et travailleuses du Québec (FTQ)
Lizotte-Lepage, Audrey, Canada Post
McAllister, Heather, CIBC
McGraw, Margaret, National Action Committee on the Status of Women (NAC)
Michael, Lorraine, National Action Committee on the Status of Women (NAC)
Olsen, David, Canada Post
Pagé, Richard, United Steelworkers of America (USWA)
Paul, Gail, Air Canada
Prince, Monique, Confédération des syndicats nationaux (CSN)

Reid, Tom, United Steelworkers of America–Canada
Tiernay, Tim, TD Bank Financial Group
Turmel, Nycole, Public Service Alliance of Canada (PSAC)
Wall, Carol, Communications, Energy & Paperworkers Union (CEP)
Weiler, Paul, Harvard Law School
White, Marilyne, Canadian Union of Public Employees (CUPE)
Whitefield, Karen, Canadian Autoworker Union (CAW)
Whiteker, Lyne, Public Service Alliance of Canada (PSAC)
Whitelaw, Beverly, Treasury Board Secretariat (TBS)
Whitfield, Karen, Canadian Autoworker Union (CAW)

2. Women's Group Roundtable – October 2002

Côté, Andrée, National Association of Women and the Law (NAWL)
Diamond, Bonnie, National Association of Women and the Law (NAWL)
Genaille, Sheila, Métis National Council of Women, Inc.
Gibb, Sheila, National Association of Women and the Law (NAWL)
Javed, Nayyar, Canadian Research Institute for the Advancement of Women (CRIAW)
Marshall, Kathy, DisAbled Women's Network (DAWN)
Parsons, Trudy, DisAbled Women's Network (DAWN)
Piche, Marie-Anne, Métis National Council of Women, Inc.
Sekhar, Kripa, National Action Committee on the Status of Women (NAC)
Webb, Pat, National Women's Reference Group on Labour Market Issue (NWRG)

III. SYMPOSIUM – January 16 and 17, 2003

Facilitator

Saba, Tania, Université de Montréal

Keynote Speaker

David-McNeil, Jeannine, HEC Montréal

Presenters

Agocs, Carol, University of Western Ontario
Anderson, John, Canadian Council on Social Development
Buckley, Melina, Lawyer and Legal Policy Consultant
Carr, Paul, G. DiGiacomo Consulting Services
Charest, Éric André, Université de Montréal
Cornish, Mary, Cavalluzzo Hayes Shilton McIntyre & Cornish
Davidson-Palmer, Judith, J. Davidson-Palmer & Associates
DiGiacomo, Gordon, G. DiGiacomo Consulting Services
Dunlop, Margaret, G. DiGiacomo Consulting Services
Durber, Paul, Opus Mundi Canada
Faraday, Fay, Cavalluzzo Hayes Shilton McIntyre & Cornish
Findlay, Sue, Social Policy Consultant

Forrest, Anne, University of Windsor
Kainer, Jan, York University
Kervin, John, University of Toronto
Lawrence, Gail, Trendline Consulting Services
Lequin, Jacques-André, Université du Québec en Outaouais
McDermott, Patricia, York University
Paquet, Renaud, Université du Québec en Outaouais
Saint-Laurent, France, Trudel Nadeau Avocats
Townson, Monica, Monica Townson Associates
Warskett, Rosemary, Carleton University

Participants

Abou-dib, Mariam, Public Service Alliance of Canada (PSAC)
Aucoin, Louise, New Brunswick Pay Equity Coalition
Benmergui, Ruben, Human Resources Professional
Berry, Helen, Status of Women Canada
Biswas-Mistry, Sharmila, National Association of Women and the Law (NAWL)
Brady, Erin, Justice Canada
Buck, Kerry, Canadian Human Rights Commission (CHRC)
Côté, Andrée, National Association of Women and the Law (NAWL)
Cumming, Steve, Canadian Council on Social Development (CCSD)
de Aguayo, Jacquie, Public Service Alliance of Canada (PSAC)
Dukovich, Senka, Ontario Pay Equity Commission
Duvall, Donna, Canadian Human Rights Commission (CHRC)
Fang, Tony, Statistics Canada
Genge, Sue, Canadian Labour Congress (CLC)
Gibb, Sheila, National Association of Women and the Law (NAWL)
Gingras, Carole, Fédération des travailleurs et travailleuses du Québec (FTQ)
Giroux, Linda, Treasury Board Secretariat (TBS)
Grant, Karel, National Women's Reference Group on Labour Market Issues
Greschuck, Nadia, Human Resources Development Canada (HRDC)
Groarke, Paul, Canadian Human Rights Tribunal (CHRT)
Hallé, Ghislain, Confédération des syndicats nationaux (CSN)
Hélie, Roselyn, Treasury Board Secretariat (TBS)
Howell-Solc, Sandi, Canadian Union of Public Employees (CUPE)
Jaekl, Margaret, Public Service Alliance of Canada (PSAC)
Javed, Nayyar, Canadian Research Institute for the Advancement of Women
Jodoin, Carole, Syndicat des Métallos (Québec)
Kennedy, Andrea, National Women's Reference Group on Labour Market Issues
Kropp, Douglas, Justice Canada
Laurendeau, Hélène, Treasury Board Secretariat (TBS)
Leamen, Nancy, Canadian Bankers Association (CBA)
Leblanc, Raymonde, Confédération des syndicats nationaux (CSN)
Leighton, Margaret, Ontario Pay Equity Hearings Tribunal
Leowinata, Sevilla, National Organization of Immigrant and Visible Minority Women of Canada
Lépine, Sylvie, Fédération des travailleurs et travailleuses du Québec (FTQ)

Lizotte-Lepage, Audrey, Canada Post
Marchand, Gisèle, Réseau national d'action éducation femmes
Marshall, Kathy, DisAbled Women's Network Canada (DAWN)
McAllister, Heather, TD Bank
Miller, Greg, Canadian Human Rights Tribunal (CHRT)
Moran, Jocelyne, Treasury Board Secretariat (TBS)
Morgan, Rosemary, Canadian Association of University Teachers (CAUT)
Najem, Elmustapha, Université du Québec en Outaouais
Narducci, Piero, Canadian Human Rights Commission (CHRC)
Paliga, Michael, Human Resources Development Canada (HRDC)
Parekh, Girish, Canadian Human Rights Commission (CHRC)
Parry, Jennifer, Government of the Northwest Territories
Parsons, Trudy, DisAbled Women's Network (DAWN)
Peers, Ann, Ontario Pay Equity Commission
Pentney, Bill, Justice Canada
Perreault, Serge, Fédération des travailleurs et travailleuses du Québec (FTQ)
Piche, Marie-Anne, Métis National Council of Women Inc.
Rexe, Kate, Canadian Council on Social Development (CCSD)
Richmond, Penny, Canadian Labour Congress (CLC)
Saba, Tania, Université de Montréal
Sekhar, Kripa, National Action Committee on the Status of Women (NAC)
Simard, Danielle, Canadian Human Rights Commission (CHRC)
Smith, Ekuwa, Canadian Council on Social Development (CCSD)
Szigeti, Naomi, Status of Women Canada
Tardiff, France, Conseil d'intervention pour l'accès des femmes au travail (CIAFT)
Tennant, Ariane, Université de Montréal
Thibault, Francine, Commission de l'équité salariale Québec
Torres, Sara, Canadian Research Institute for the Advancement of Women
Wall, Carol, Communications, Energy & Paperworkers Union (CEP)
Wall, Leona, Métis National Council of Women, Inc.
Webb, Pat, National Women's Reference Group on Labour Market Issues
White, Marilyne, Canadian Union of Public Employees (CUPE)
Whitfield, Karen, Telecommunications Workers Union (TWU)
Whittaker, Lynn, Public Service Alliance of Canada (PSAC)

List of Participating Organizations and Individuals

I. Organizations

Alberta Federation of Labour
Alberta Union of Provincial Employees
Association of Classification and Organization Consultants
Association of Public Service Alliance Retirees
British Columbia Federation of Labour
British Columbia Human Rights Coalition
Business & Professional Women's Clubs Canada
Canadian Association of University Teachers (CAUT)

Canadian Bankers Association (CBA)
Canadian Council on Social Development (CCSD)
Canadian Federation of Business & Professional Women's Clubs
Canadian Labour Congress (CLC)
Canadian Research Institute for the Advancement of Women (CRIAW)
Canadian Telecommunications Employees Association
Canadian Union of Public Employees (CUPE)
Canadian Union of Public Employees Airline Division
Canadian Union of Public Employees – British Columbia
Communications, Energy and Paperworkers Union (CEP)
Communications, Energy and Paperworkers Union (Ontario Region Women's Committee)
Confédération des syndicats nationaux (CSN)
DisAbled Women's Network (DAWN)
Federally Regulated Employers – Transportation & Communications (FETCO)
Fédération des travailleurs et travailleuses du Québec (FTQ)
Femmes Action
Femmes regroupées en options non-traditionnelles (FRONT)
Laurier Institution
Le Conseil d'intervention pour l'accès des femmes au travail (CIAFT)
Link HR Systems, Inc.
Métis National Council of Women Inc.
National Action Committee on the Status of Women (NAC)
National Association of Women and the Law (NAWL)
National Council of Women of Canada
National Organization of Immigrant and Visible Minority Women of Canada (NOIVMWC)
National Women's Reference Group on Labour Market Issues (NWRG)
New Brunswick Pay Equity Coalition
New Westminster District Labour Council
Nova Scotia Federation of Labour
Public Service Alliance of Canada (PSAC)
Réseau national d'action éducation femmes
Syndicat canadien de la fonction publique du Québec
Syndicat des employés professionnels et de bureau
United Steelworkers of America
Vancouver Board of Trade

II. Consultants and Consulting Firms

Gabriel Éthier, Independent Consultant
Hay Management
Roslyn Kunin
Sandra Weeks, Independent Consultant
Watson Wyatt
William Mercer Management Consulting

III. Government Organizations

Canadian Human Rights Commission – Employment Equity Program
Canadian Human Rights Commission – Pay Equity Branch
Canadian Human Rights Tribunal
Government of the Northwest Territories
Human Resources Development Canada / Labour Program
Ontario: Pay Equity Commission
Ontario: Pay Equity Hearings Tribunal
Quail Task Force on Modernizing Human Resources Management
  in the Public Service
Québec: Commission de l'équité salariale
Québec: Bureau de conseil et de formation en équité salariale, Ministère du Travail
Treasury Board Secretariat
Abou-dib, Mariam
Agocs, Carol

IV. Individuals Participating in the Consultation Process

Allenby, Susan
Amiot, Suzanne
Anderson, John
Anderson, Ranford
Armah, Emmanuel
Aubin, Sonia
Aucoin, Louise
Baisi, Roxanna
Barrett, Kerry
Beemer, Kim
Bégin, Martine
Benmergui, Ruben
Benson, Robyn
Bernier, Claude
Berry, Helen
Beutler, Ann
bich, geneviève
Biswas-Mistry, Sharmila
Boucher, Shirley
Brady, Erin
Brazeau, Murielle
Brazier, Don
Brennan, Regina
Brezet, Richard
Brouillette, Michèle
Buck, Kerry
Buckley, Melina
Campbell, Darla
Carbonneau, Claudette
Carisse, Monique
Carnegie, Laurette
Carr, Joel
Carr, Paul
Carroccetto, John
Chalifoux, Carolyn
Charbonneau, Louise
Charest, Éric André
Chrétien, Lise
Cirino, Maria
Clarke Walker, Marie
Collins, Denise
Coltrinari, Livio
Cornish, Mary
Côté, Andrée
Côté, Rosette
Cromb, Marjorie
Cumming, Steve
Dadaille, Bertin
Dahliwal, Balwinder
Daly, Mary
David-McNeil, Jeannine
Davidson-Palmer, Judith
de Aguayo, Jacquie
Delorme, Valérie
DesLauriers, Jean-François
Deveau, Dennis
Diamond, Bonnie
DiGiacomo, Gordon
Dreher, Dale
Du Tremble, Denise

Ducharme, Patty
Dugré, Isabelle
Dukovich, Senka
Dunlop, Margaret
Durber, Paul
Duvall, Donna
Earle, Mark
Engelmann, Peter
Engren, Myrna
Éthier, Gabriel
Etienne, Marie-Jude
Fang, Tony
Faraday, Fay
Farber, Rania
Findlay, Sue
Fong, Angela
Forrest, Ann
Forster, Kim
Foye, Ivy
Gagnon, Odette
Gannon, Carl
Gascon, Marjolaine
Genaille, Sheila
Genge, Sue
Gervais, Colette
Gervais, Mario
Gibb, Sheila
Gingras, Carole
Gingras, Lynne
Giroux, Linda
Giroux, Sylvie
Gladstone, David
Grant, Karel
Grenier, Louise
Greschuck, Nadia
Groarke, Paul
Grou, Sylvie
Groulx, Françoise
Haener, Sylvia
Hallé, Ghislain
Hauser, Ruth
Hélie, Roselyn
Henkelman, Hilda
Howell-Solc, Sandi
Hull, Treat
Iyer, Nitya
Jaekl, Margaret
Javed, Nayyar
Jodoin, Carole
Johns, Rocklee
Johnson, Philip
Johnson, Shirley
Jones, Chris
Jordan, Colleen
Kainer, Jan
Kelly, Kimberley
Kennedy, Andrea
Kervin, John
Kindred, Kevin
Knight, Brenda
Knight, Nancy
Kropp, Douglas
Kuijper, Tineke
Kunin, Roslyn
Lagueux, Diane
Laidlaw-Sly, Catharine
Lang, John
Lapointe, Chantal
Lapointe, Natalie
Larose, Daniel
Laurendeau, Hélène
Lawrence, Gail
Leamen, Nancy
Leblanc, Raymonde
Leighton, Margaret
Leowinata, Sevilla
Lépine, Sylvie
Lequin, Jacques-André
Léveillé, Robert
Lizotte-Lepage, Audrey
Longa, Frank
Lorquet, Sébastien
Loveday, Peter
Marchand, Gisèle
Marshall, Kathy
McAllister, Heather
McClymont, Alice
McDermott, Patricia
McGlynn, Debbie
McGraw, Margaret
McGregor, Fiona
Michael, Lorraine
Miller, Greg
Miller, Terry
Moran, Jocelyne
Morash, Stephen

Morgan, Peggy
Morgan, Rosemary
Morris, Iain
Najem, Elmustapha
Narducci, Piero
Nightingale, M.
O'Donnell, Susan
Olsen, David
Pagé, Richard
Paliga, Michael
Paquet, Renaud
Paquette, Philémon
Parekh, Girish
Park, Dave
Parry, Jennifer
Parsons, Trudy
Paul, Gail
Payant, Chantal
Payne, Brian
Peers, Ann
Pentney, Bill
Perreault, Serge
Perron, Daniel
Perron, Denise
Perron, Johanne
Petersen, Katherine
Piche, Marie-Anne
Pollock, Denise
Portelance, Alain
Prince, Monique
Proulx, Danielle
Reid, Tom
Rexe, Kate
Riche, Nancy
Richmond, Penny
Rinfret, Marie
Robert, Claude
Roberts, Florence
Robertson, Carole
Rodgers, Michele
Rosser, Beverley
Roy, René
Rumig, Tracey
Saba, Tania
Saint-Laurent, France
Sawatzky, Diane
Scallin, Pat
Schira, Angela
Schultz, Joanna
Scott, Ivy
Seaboyer, Deb
Sekhar, Kripa
Selby, Jim
Shaner, Karan
Simard, Danielle
Smith Muir, Sandra
Smith, Beverley
Smith, Ekuma
Solomon, Linda
Staschuk, Jane
Stearns, Nikki
Sullivan, Linda
Sunstrum, Andrew
Sweeney, Josée
Sweeney, Lyne
Swinemar, Mary
Szigeti, Naomi
Tardif, France
Taylor, Ruth
Tennant, Ariane
Thibault, Francine
Thomson, Ian
Tiernay, Tim
Torres, Sara
Townson, Monica
Turmel, Nycole
Ursino, Joanne
Wall, Carol
Wall, Leona
Warskett, Rosemary
Watson, Kristin
Webb, Pat
Weeks, Sandra
White, Emmanuel
White, M.-C.
White, Marilyne
Whitelaw, Beverly
Whitfield, Karen
Whittaker, Lynn
Wilson, Jean
Woodward, Shaleen
Young, Deborah
Zemmelink-Pope, Johanne

Appendix H – Commissioned Research

The Task Force's research program was developed in consultation with major stakeholders. A call for research papers was posted on the website in January 2002 and over 400 letters were sent to universities, other research institutes and consulting firms across Canada. In total, 29 external research papers were commissioned from academics, scholars, consultants and other experts across Canada. These research papers focused on a number of specific questions included in the Research Agenda that was based on five themes:

1. The need to update and clarify federal equal pay provisions
2. Methodological issues
3. Implementation, maintenance and enforcement of pay equity
4. The legal framework for dealing with pay equity matters
5. Pay equity and industrial relations

Agocs, Carol – University of Western Ontario

Involvement of Workplace Partners in Pay Equity Implementation and Maintenance

Summary: This paper examines the potential contributions of employee involvement to the implementation of pay equity in the workplace, and proposes critical support systems and conditions that need to be in place in order for employee involvement to be effective. The report notes that employee involvement or participation in decision-making in the workplace is a growing trend across the post-industrial world and indicates that it could offer a number of benefits to pay equity implementation. Experience with legislated and voluntary employee participation in the workplace with other programs such as employment equity and health and safety committees is also examined to ascertain possible implications for pay equity implementation. Quebec's pay equity legislation is identified as a model for consideration noting that it is unique in requiring the establishment of a pay equity committee. The paper concludes that pay equity is best conceived as part of a holistic reorientation of the structure and culture of employment relations in the direction of greater equity and democracy for all workplace participants. Accordingly, pay equity, employment equity and employee involvement are mutually reinforcing organizational change processes.

Anderson, John/Smith, Ekuwa/Fawcett, Gail/Tsoukalas, Spyridoula/Rese, Kate – Canadian Council for Social Development

Expanding the Federal Pay Equity Policy Beyond Gender

Summary: This paper examines the issue of extending coverage of pay equity legislation to other disadvantaged groups in the labour market. It contains a literature review of relevant work on the issue of pay inequality, and a detailed qualitative and statistical examination of visible minorities, Aboriginal peoples and persons with disabilities. Options for expanding coverage of pay equity beyond gender are explored and assessed. The paper notes that much work remains to be done on developing a more complete portrait of equity groups in the workforce in general and within particular employers, and outlines further research which should be undertaken.

Baker, Michael/Gunderson, Morley – University of Toronto

Allowable Exemptions and Pay Equity

Summary: This paper reviews allowable exemptions in pay equity legislation in Canada and assesses them against generic program evaluation criteria (allocative efficiency, horizontal equity, vertical equity, target efficiency, transparency, administration costs, and stakeholder acceptability). The authors note that exemptions obviously move away somewhat from the basic principles of pay equity but they do so only in a limited set of areas, which matter most for adhering to market principles of allocative efficiency as well as the pragmatic principle of stakeholder acceptability. They also suggest that the flexibility provided by the exemptions will be more important in the future due to the changing nature of the workforce and the workplace (e.g., increasing merit or performance pay, labour shortages, job rotation and temporary training, multi-skilling and life-long learning; and regional wage differences). The paper concludes with a discussion of the main policy implications.

Baker, Michael/Gunderson, Morley – University of Toronto

Non-Standard Employment and Pay Equity

Summary: This paper examines the growth of non-standard employment in Canada and the federally-regulated private sector. The implications of non-standard employment for the application of federal equal pay provisions are analysed, focusing on the design of the legislation, its implementation and its enforcement. The authors note that non-standard employment could have implications for the various steps that are involved in the design, implementation and enforcement of the pay equity process but most of these issues prevail for regular employees as well and are not insurmountable. The paper concludes with a summary and a discussion of the policy options for ensuring that these changes in the organization of work are reflected in federal pay equity provisions. The pros and cons of these different options are outlined, with particular attention to identifying the policy trade-offs that are involved.

Boivin, Louise – MCE Conseils

Implementing Pay Equity in Small-to-Medium-Sized Enterprises

Summary: This paper describes a standard questionnaire used in measuring job value for pay equity purposes. The questionnaire was administered to 20 small-to-medium-sized and two medium-to-large-sized Quebec businesses to determine variances. Findings are presented on job classes, the key role of pay equity committees, the effects of enterprise size, data collection, the legal definition of remuneration and pay equity maintenance. The author indicates a preference for a proactive pay equity system over a complaint-based one and argues that the bodies responsible for overseeing pay equity implementation must be proactive and provide training which

addresses systemic discrimination as well as job value determination, the very foundation of the pay equity process.

Buckley, Melina – Lawyer and Legal Policy Consultant

Prospects for the Mediation of Pay Equity Matters within Federal Jurisdiction

Summary: This paper investigates the role of mediation in the implementation of a collaborative federal pay equity system. Three models of mediation (settlement, facilitative and transformative mediation) are compared and discussed and the specific nature of pay equity matters that should be taken into consideration in developing a dispute resolution system are outlined. Four options for the integration of mediation into a broader collaborative pay equity implementation process are discussed: (1) mediation in establishing the framework for implementation; (2) mediation of specific disputes within the implementation process; (3) mediation of pay equity complaints; and (4) mediation in the post-plan and maintenance process. The author concludes that, given the predominance of settlement-oriented mediation processes and practices, integrating the broader approach reflected in these options will require the conscious development of a new dispute resolution culture. This development can be assisted through a qualitative policy design process that makes explicit the role of the mediator, the nature of the mediation process, and its place within the enforcement of pay equity rights.

Charest, Éric André – Université de Montréal

Sector-Based Pay Equity Committees in Quebec Under Chapter III of the Pay Equity Act: Survey and Description of the Leading Sector-Based Initiatives

Summary: This paper provides an overview of sector-based pay equity committees approved by Quebec's Commission de l'équité salariale [pay equity commission] and other pay equity sector initiatives that have emerged in Quebec. The advantages of these sector initiatives are discussed and the report concludes with a number of suggestions that could be applied to other legislative initiatives on pay equity.

Chaykowski, Richard P. – Queens University

Achieving Pay Equity Under a Transformed Industrial and Employment Relations Systems

Summary: This paper examines some of the main developments in industrial and employment relations and their implications for the coverage and implementation of pay equity. It identifies current gaps in pay equity policy and examines areas in which pay equity policy can be redesigned to increase its effectiveness. Issues addressed include whether or not pay equity negotiations should be undertaken separately from collective bargaining, information disclosure, the mechanism for resolving impasses, and compliance responsibility. Lessons learned from joint occupational safety and health committees and approaches to modifying or redesigning pay equity in order to make it more consequential, especially for workers not covered by unions and for nonstandard employees are also addressed. The paper concludes with a discussion of major challenges for the implementation of pay equity in the current environment and possible options to ensure that pay equity is more effective.

Chaykowski, Richard P. – Queens University

Implementing Pay Equity in the Context of Emerging Workplaces and Employment Relationships

Summary: This paper reviews key trends and developments in the Canadian labour market, including characteristics of workplaces and employment in federal jurisdiction, that have implications for women workers and the implementation of pay equity. Discussion focuses on a number of issues, including, economic well-being, skills, firm size, organizational change and the transformation of production systems, and employment arrangements. Results suggest that a large proportion of female workers may fall outside the scope of current pay equity plans because of the intersection of several factors: pay equity tends not to reach the smallest class of establishments, which are on the rise; small establishments, whether unionized or not, are prevalent in the federal jurisdiction; part-time work is prevalent among small firms; and part-time work is primarily female. The paper concludes with a discussion of key challenges that new pay equity policy should address.

Chaykowski, Richard P. – Queens University

The Implications for Pay Equity of a Change in Business Ownership and Possible Change in Union Certification

Summary: This paper considers the implications for pay equity of a change in business ownership or union representation. It discusses a model of industrial relations outcomes and focuses on four issues concerning successorship in a pay equity context—how to address successorship rights; how to define the best approach to establish rights; how to ensure non-unionized workplaces are covered; and how to define the scope of successorship provisions. Aspects of existing labour relations legislation, as well as cases disposed of by the Canada Industrial Relations Board that deal with successor rights, are examined in order to identify specific issues relevant to addressing pay equity successor rights. The paper concludes with some policy implications and options related to ensuring the continuity of pay equity in the event of succession.

Davidson-Palmer, Judith – J. Davidson-Palmer & Associates Inc.

Assessing Pay Equity Implementation, Monitoring and Enforcement Models

Summary: This paper explores policy thinking and experiences in jurisdictions with pay equity implementation, monitoring and enforcement models. It assesses four pay equity models (complaint-based; proactive; audit; and comprehensive economic) and identifies those features most useful for a new federal legislative model, including recognition of pay equality as a human right, sufficient resources, a transition protocol for complaints, maintenance and audit provisions, and pay equity requirements for federal contractors.

DiGiacomo, Gordon/Carr, Paul/Dunlop, Margaret – G. DiGiacomo Consulting Services

Six Case Studies on Pay Equity Implementation

Summary: This paper presents the results of six cases studies, four federally-regulated employers, one provincially-regulated employer and one provincially-regulated sector, which address the implementation of pay equity in the workplace. Information gathering was done through interviews and by reviewing documents. Interviews were conducted with managers responsible for pay equity implementation, and with union representatives and employees involved in the pay equity exercise. Interview questions sought to elicit information on a broad range of issues, including organizational structures in place to oversee pay equity implementation, training, communications, job evaluation, wage adjustment methodology, maintenance and and union participation. The paper reveals several key themes and concludes with lessons learned.

Durber, Paul – Opus Mundi Canada

Criteria and Unit of Analysis for Sex Predominance and Pay Equity Evaluation

Summary: This paper examines the "unit of analysis" criteria to be used in establishing sex predominance of a job, group of jobs or job class in pay equity analysis. Census data for 1991 and 1996 confirm occupational segregation and reveal the emerging feminization of some occupations. The author recommends using the job title or class as the initial basis for deciding sex predominance, with recourse to broader units if greater flexibility is needed. In his view, existing criteria may not be flexible enough to identify emerging feminized occupations as female-predominant, so that new qualitative criterion may be needed.

Durber, Paul – Opus Mundi Canada

Valuing Work and Pay Equity: Issues, Practices and Future Directions

Summary: This paper examines job evaluation practices and alternatives, pay equity criteria, best practices and the special needs of small organizations. The author warns against oversimplifying processes or viewing job evaluation as a cure-all. Statutory clarity and education are key. The author believes that a pay equity agency could play an important role in providing publicity, guidance, sensitization, training, monitoring and dispute resolution. Such assistance would help engender openness and stakeholder confidence in the outcome, two main conditions for success. This would be particularly helpful for small organizations. Other best practices include extensive testing, systems and processes based on empirical information, and the use of questionnaires, job evaluation plans, continuing gender analysis and pay audits.

Faraday, Fay/Cornish, Mary/Shilton, Elizabeth – Cavalluzzo Hayes Shilton McIntyre & Cornish

Canada's International and Domestic Human Rights Obligations to Ensure Pay Equity: Obligations to Design an Effective, Enforceable and Proactive Federal Pay Equity Law

Summary: This paper examines what principles should inform new federal pay equity legislation. The study links pay inequity in Canada to occupational segregation, noting that this systemic discrimination is widely acknowledged. The paper then describes international human rights instruments to which Canada is a signatory; domestic Canadian human rights legislation and *Canadian Charter of Rights and Freedoms* obligations; and evolving notions of employers' proactive obligations. The authors conclude that the federal government's international and domestic obligations are mutually reinforcing and complementary. In their opinion, the government must enact pay equity legislation that is effective, enforceable and proactive.

Findlay, Suzanne Mary/Warskett, Rosemary – Carleton University

Pay Equity for Non-Unionized Workers in Federal Jurisdictions: How to Make it Work?

Summary: This paper reviews initiatives in Ontario and Quebec designed to facilitate the participation and access of non-unionized workers to pay equity. It also explores the views of pay equity practitioners, academic researchers and community organizers on pay equity for non-unionized workers in federal jurisdiction. The authors conclude that much-needed proactive legislation alone is not enough: a proactive pay equity commission is a must, along with community-based outreach and education programs. The pay equity model, designed for traditional employees in large organizations, may not work at all for some non-unionized workers. The question now is whether the existing model can be made to fit the new workplace realities, or whether alternatives are needed to integrate non-unionized workers into the policy process.

Forrest, Anne – University of Windsor

After the Pay Equity Award: Can Collective Bargaining Maintain Equal Pay for Work of Equal Value?

Summary: This paper examines whether traditional collective bargaining eliminates gender wage gaps. The analysis identifies gender-segregated patterns of union representation and bargaining as the major obstacles to overcome. Six options are assessed: holding separate table bargaining for pay equity, maintaining existing bargaining structures, implementing establishment-wide bargaining; implementing company-wide bargaining, benchmarking key female-male wage comparisons and including pay equity in the Preamble to the *Canada Labour Code*. None of these, the author argues, is likely to jeopardize public policy, erode free collective bargaining or cause inflationary wage increases; a redistribution of the wage package between women and men is more probable.

Kervin, John – University of Toronto

Wage Adjustment Methodologies

Summary: This paper classifies the various pay equity adjustment methodologies into basic types and examines what effect their differences have on pay equity adjustments. The author suggests five criteria for selecting a wage adjustment methodology: simplicity, lack of arbitrariness, maintenance of the compensation structure, impact on relativities, and minimization of residual gender wage bias. The paper concludes that no one methodology is ideal and that the simplest methodology (male/female job-to-job comparisons) suffers from the most problems. The choice of methodology should be based on a combination of the pattern of job and value points data in the organization, and the five criteria.

Kervin, John – University of Toronto

Measures of Job Gender

Summary: This paper compares different approaches to measuring job gender composition, arguing that job gender is linked to work content and that, ultimately, it is work content and the valuation of work that lead to pay inequity. The paper seeks to determine which approaches provide sufficient differentiation between female and male jobs, are less likely to underestimate female-male wage gaps, and are stable and theoretically meaningful. The author concludes that the choice of measurement technique does make a real and substantial difference in pay equity results. He considers that techniques based on occupational pay levels should be used unless compelling reasons exist for adopting another approach.

Kervin, John – University of Toronto

Pay Equity in Small Establishments

Summary: This paper examines the specific problems faced by small establishments in measuring job gender, wages and job value, and in determining equity pay gaps and equity wage adjustments. The paper examines how these problems affect the calculation of pay gaps and wage adjustments, and suggests procedures and methodologies to help overcome such difficulties without looking outside the organization. The paper also examines the risk a small workplace runs of either underestimating or overestimating wage gaps when it uses alternative procedures. The author concludes that the majority of pay equity measurement and calculation problems encountered in small establishments can be resolved.

Lawrence, Gail – Trendline Consulting Services

Models and Best Practices for Pay Equity Maintenance

Summary: This research paper examines lessons learned from the Ontario experience of pay equity maintenance, based on a literature review and a survey of employers and unions in northern and northwestern Ontario. Information is provided on the maintenance practices and experiences of the survey respondents. A number of best practices are discussed, ranging from joint labour-management workplace pay equity committees to the simultaneous implementation of pay equity wage adjustments (the effective date of all adjustments is the same for all groups). The paper concludes with a discussion of the potential advantages and disadvantages of a number of options suggested by the respondents for the effective maintenance of pay equity. There was almost unanimous agreement by all respondents that maintenance must be mandatory under any legislation.

McDermott, Patricia/Kainer, Jan – York University

Defining the Scope of Implementation of Pay Equity within Federally-Regulated Workplaces: Defining "Establishment"

Summary: This paper focuses on the definition of "establishment" in the *Canadian Human Rights Act* and the related *Equal Wage Guidelines, 1986*. A pending appeal decision could cause some single bargaining units to be defined as "establishments," making it hard to find appropriate male comparators for workers in female-dominated or non-union settings. Because high gender segmentation in the Canadian labour market and the fragmented nature of collective bargaining in Canada, redress could become difficult or impossible to obtain. The researchers urge the federal government to move to a proactive pay equity model and to adopt a broader, but clearer and more flexible definition of the term "establishment," which should include the concept of an "implementation site."

Paquet, Renaud/Lequin, Jacques-André – Université du Québec en Outaouais

Interrelations between Labour Relations Processes and Pay Equity: The Specific Case of the Federal Public Service

Summary: This research focuses on pay equity issues in the federal public sector and examines the job classification system, the mechanisms for regulating pay equity, and the staff relations system and structures, in order to assess the various options for implementing and maintaining pay equity. The report concludes with a number of options for a federal public- sector regulatory mechanism that takes into account existing labour relations institutions. These options include making classification jointly negotiable by all unions at a master table, independent of individual collective agreement negotiations, and mandating a specialized tribunal to settle related disputes; detaching certification from the classification system; considering Treasury Board a single-establishment employer; ensuring the House of Commons and Senate are subject to the *Public Service Staff Relations Act*; considering separate employers non-Treasury Board employers; and empowering the Canadian Human Rights Commission to monitor the implementation of the new system.

Priest, Margot – Regulatory Consulting Group Inc.

Options for a Pay Equity Oversight Agency

Summary: This paper assesses models for a federal pay equity oversight agency, based on predetermined functions and the criteria of fairness, transparency, efficiency and effectiveness, in the context of both a complaint-driven process and a proactive approach. The three main options are a court-like model with an independent, separate, and specialized adjudicator; a two-tier model with a commission and a separate adjudicator; and a unified model resembling those in certain regulatory agencies. The paper also examines pay equity institutions in other domestic and international jurisdictions and analyzes how they interact with industrial relations regimes. The paper concludes that the three models can be adapted or even partially combined, taking into consideration policies, priorities and values, and political and stakeholder acceptability.

Saint-Laurent, France – Trudel Nadeau Avocats

Research into the Obligation to Maintain Pay Equity

Summary: This paper discusses whether Quebec's *Pay Equity Act* requires unions to maintain pay equity within a single enterprise, given their fair representation duty and representation monopoly. The researchers explore the potential role of *Quebec's Charter of Human Rights and Freedoms* in pay equity maintenance, the impact of multiple pay-equity systems in a single enterprise, the relationship between pay equity and collective bargaining, and unions' possible obligation to accommodate agreements negotiated by another group. The paper concludes that the employer should retain primary responsibility for pay equity maintenance and recommends that unions maintain pay equity only for the members of their own bargaining units.

Tennant, Ariane – Université du Montréal

Pay Equity in Europe: A Comparative Study of European Union and Selected National Approaches

Summary: This paper reviews pay equity in the European Union and selected member states, and in Norway and Switzerland. It examines the gender wage gap, legislation, litigation, the institutional pay equity framework and the role of the industrial relations system in each country. European and Canadian approaches have some similarities. European proactive approaches, however, tend to include the private sector. Canadian approaches use gender predominance criteria, whereas European approaches tend to use unified, gender-neutral job evaluation systems for all job classes. Finally, proactive Canadian approaches accord pay equity responsibility to institutions dedicated to the promotion and enforcement of pay equity, whereas European institutions tend to stress the interrelation between pay equity and employment equity

Townson, Monica – Monica Townson Associates Inc.

The Implications of Non-Standard Forms of Work for the Application of Federal Equal Pay Provisions

Summary: This paper examines ways to adapt federal pay equity provisions to the new reality of non-standard work (contracts, self-employment, multiple jobs, and temporary, part-year or part-time work), which is more likely to affect women, particularly those who are immigrants, Aboriginals, or members of visible minorities. The paper suggests recognizing pay equity as a human right separate from collective bargaining. Other suggestions include removing the distinction between "dependent" and "independent" contractors; adopting a contract compliance system for federal government contractors; redefining "establishment" very broadly or, preferably, eliminating it entirely from the legislation; making temporary help agencies jointly and severally liable; and promoting broader-based collective bargaining. A more radical approach would entail moving beyond the existing model altogether.

Townson, Monica – Monica Townson Associates Inc.

The Treatment of Non-Wage Benefits in Pay Equity Comparisons

Summary: This paper reviews the significant changes made to pensions and other non-wage benefits over the past 25 years and examines the implications of these for pay equity in federal jurisdiction. Practical methods for comparing non-wage benefits for the purposes of pay equity are discussed, including options for translating a method or methods into clear, simple and gender-neutral standards. The author concludes that amendments should be made to subsection 11(7) of the *Canadian Human Rights Act* to include a more detailed definition of "wages" and to the *Equal Wages Guidelines,1986* to include a section on the treatment of non-wage benefits which would give more detail about how such benefits should be addressed.

Winter, Nadine – The Winter Consulting Group

Treatment of Cash Compensation in Pay Equity Comparisons

Summary: This paper examines forms of cash compensation that have been included in pay equity legislation in various Canadian jurisdictions and provides suggestions on what elements should be considered in federal legislation. The definition of "job rate" is examined and a critique of various models of comparing base pay between male job classes and female job classes is provided. Various types of permissible differences in compensation are reviewed and related back to various salary/wage structures and approaches for making pay equity comparisons. The treatment of other forms of cash compensation in making pay equity comparisons is also examined in the context of three tests: Is the permissible difference available to both men and women? Is there clarity and integrity on how any permissible difference is applied? What is the gender impact of the permissible difference used? The paper concludes that flexibility in the design and standards of any new federal statute/regulations will need to be adopted, if pay equity compliance is to be achieved, while noting that there are areas where greater definition is required to give employers some clarity on what is expected and how they can move forward to implement pay equity.

Select Bibliography

Abella, Judge Rosalie Silberman. (1984). *Equality in Employment: A Royal Commission Report.*

Acker, Joan. (1989). *Doing Comparable Worth: Gender, Class and Pay Equity.* Philadelphia: Temple University Press.

Advisory Committee on Labour Management Relations in the Federal Public Service. (2001). *Working Together in the Public Interest.*

Agocs, Carol. (2003). *Involvement of Workplace Partners in Pay Equity Implementation and Maintenance.* Unpublished research paper commissioned by the Pay Equity Task Force.

Ames, L.J. (1995). "Fixing Women's Wages: The Effectiveness of Comparable Worth Policies." *Industrial and Labor Relations Review.* Vol. 48, No. 4, July 1995.

Anker, Richard. (1997). "Theories of occupational segregation by sex: An overview." *International Labour Review,* Vol. 136, No. 3. Geneva: ILO.

Badgett, M.V. Lee and Heidi I Hartmann. (1995). "The Effectiveness of Equal Employment Opportunity Policies." In Margaret C. Simms (Ed.), *Economic Perspectives on Affirmative Action.* Washington, D.C.: Joint Centre for Political and Economic Studies.

Baker, Michael. (1995). "The Distribution of the Male/Female Earnings Differential, 1970-1990." *Canadian Journal of Economics* (CJE), Vol. 28, No. 3.

Baker, Michael and Nicole Fortin. (2000). *Does Comparable Worth Work in a Decentralized Labour Market?* Montreal: CIRANO.

Baker, Michael, and Morley Gunderson. (2002). *Allowable Exemptions and Pay Equity.* Unpublished research paper commissioned by the Pay Equity Task Force.

———. (2002). *Non-Standard Employment and Pay Equity.* Unpublished research paper commissioned by the Pay Equity Task Force.

Beach, Charles M. and Christopher Worswick. (1993). "Is There a Double-Negative Effect on the Earnings of Immigrant Women?" *Canadian Public Policy – Analyse de Politiques,* 19(1), March 1993.

Benjamin, Dwayne, Morley Gunderson, and Craig W. Riddell. (1998). *Labour Market Economics: Theory, Evidence and Policy in Canada* (4th ed.). Toronto: McGraw-Hill Ryerson.

Blum, Linda M. (1991). *Between Feminism and Labor: The Significance of the Comparable Worth Movement.* Berkeley: University of California Press.

Boivin, Louise. (2002). *Implementing Pay Equity in Small-to-Medium-Sized Enterprises.* Unpublished research paper commissioned by the Pay Equity Task Force.

British Columbia, Legislative Assembly. (2003). Debates, April 1, 2003, at 5847.

Buckley, Melina. (2003). *Prospects for the Mediation of Pay Equity Matters within Federal Jurisdiction.* Unpublished research paper commissioned by the Pay Equity Task Force.

Canada. Royal Commission on the Status of Women in Canada. (1970). *Report of the Royal Commission on the Status of Women in Canada.* Ottawa: Information Canada.

Canadian Council on Social Development (CCSD). (2003). *Expanding the Federal Pay Equity Policy Beyond Gender.* Unpublished research paper commissioned by the Pay Equity Task Force.

Canadian Facts. (1993). *Outcomes of pay equity for organizations employing 50 to 99* employees in Ontario. Toronto: Pay Equity Office.

———. (1992). *Outcomes of pay equity for organizations employing 100 to 499 employees in Ontario.* Toronto: Pay Equity Office.

Canadian Federation of Independent Business. (2002). *300 jours plus tard : les PME et l'équité salariale.* Submission presented at the hearings of the Commission de l'équité salariale, Montréal. October 2002, p. 7. See website: http://www.fcei.ca/quebec/Equite/1106.pdf.

Canadian Feminist Alliance for International Action. (2003). *Canada's Failure to Act: Women's Inequality Deepens.* Submission to the United Nations Committee on the Elimination of Discrimination Against Women on the Occasion of the Committee's Review of Canada's 5th Report.

Canadian Human Rights Act Review Panel. (2000). *Promoting Equality: A New Vision.* Report of the Canadian Human Rights Act Review Panel. Ottawa: Department of Justice.

Canadian Human Rights Commission (CHRC). (2003). *Annual Report 2002.* Ottawa: Minister of Public Works and Government Services.

———. (2002). *Annual Report 2001.* Ottawa: Minister of Public Works and Government Services.

———. (2002). *Employment Equity Report 2001.* Ottawa: Minister of Public Works and Government Services.

———. (2002). *Performance Review for the Period ending March 31, 2002.*

———. (2001). *Time for Action. Special Report to Parliament on Pay Equity.* Ottawa: Canadian Human Rights Commission.

———. (1997). *Annual Report 1996.* Ottawa: Public Works and Government Services Canada.

———. (1992). *Implementing Pay Equity in the Federal Jurisdiction.* Ottawa: Canadian Human Rights Commission. Also available at http://www.chrc-ccdp.ca/pe-ps/implement-e-f.asp?l=e.

———. (1987). *Information Session on Pay Equity.*

———. Website: http://www.chrc-ccdp.ca.

———. (Undated electronic resource). *Guide to Pay Equity and Job Evaluation*. Vol. 1: *A Summary of Experience and Lessons Learned*. Vol. 2: *The Making of a System*. Available on the Canadian Human Rights website at: http://www.chrc-ccdp.ca/pe-ps/menu.asp.

Canadian Human Rights Tribunal. (2002). *Performance Report for the Period Ending March 31, 2002*.

———. (2001). *2001-2002 Estimates. Report on Plans and Priorities*.

Charest, Éric André. (2002). *Sector-Based Pay Equity Committees in Quebec under Chapter III of the Pay Equity Act: Survey and Description of the Leading Sector-Based Initiatives*. Unpublished research paper commissioned by the Pay Equity Task Force.

Chaykowski, Richard P. (2002). *Achieving Pay Equity under a Transformed Industrial and Employment Relations System*. Unpublished research paper commissioned by the Pay Equity Task Force.

———. (2002). *Implementing Pay Equity in the Context of Emerging Workplaces and Employment Relationships*. Unpublished research paper commissioned by the Pay Equity Task Force.

———. (2002). *The Implications for Pay Equity of a Change in Business Ownership and Possible Change in Union Certification*. Unpublished research paper commissioned by the Pay Equity Task Force.

Chaykowski, Richard P., and George A. Slotsve. (1999). "Unions, Inequality and the Distribution of Income in Canada: Evidence from the 1994 Survey of Labour and Income Dynamics." *Workplace Gazette*, Vol. 2, No. 4.

Chicha, Marie-Thérèse. (2002). "La gestion de la diversité : l'étroite interdependance de l'équité et de l'efficacité," *Effectifs*, Vol. 5, No. 1, March 2002.

———. (2002). "Adopting and implementing legislation on pay equity in Quebec: Is there a double standard?" *Lien social et Politiques – RIAC*, 47: *Le genre des politiques publiques: constats et des actions*.

———. (2001). "Les politiques d'égalité professionnelle et salariale au Québec: l'ambivalence du rôle de l'état québecois." *Recherche féministes*. Vol. 14, No. 1.

———. (2000). *L'équité salariale, Mise en oeuvre et enjeux* (2nd ed.). Les Éditions Yvon Blais Inc.

———. (1999). "The Impact of Labour Market Transformations on the Effectiveness of Laws Promoting Workplace Gender Equality." In Richard Chaykowski and Lisa M. Powell (Eds.), *Women and Work*. Kingston: McGill-Queen's University Press.

———. (1998). "Les dilemmes de l'équité salariale, la récente loi proactive du Québec." *Canadian Woman Studies*. Vol. 18, No. 1.

———. (1998). "The Pay Equity Program: A Complex Multi-Stage Process." *Gestion*. Vol. 23, No. 1.

———. (1997). "Programs of pay equity and recognition of qualifications: between methodology and politics." *Les Cahiers du Mage, Égalité, équité, discrimination : hommes et femmes sur le marché du travail.*

Chicha-Pontbriand, M.-T. (1989; revised in 1998). *À travail égal, salaire égal sans discrimination : Lignes directrices pour la détermination du lien avec un des critères de discrimination de l'article 10 de la Charte*. Montreal.

Christofides L.N., and R. Swindinsky. (1994). "Wage Determination by Gender and Visible Minority Status: Evidence from the 1989 LMAS." *Canadian Public Policy – Analyse des Politiques*, Vol. 20, No. 1.

Civil Service Commission (San Francisco). Document No. 2296-86, 23/1/87, unpublished.

Coalition for Pay Equity (in New Brunswick). Website at http://www.equite-equity.com.

Coish, David and Alison Hale. (1995). *The wage gap between men and women: An update*. Statistics Canada.

Commission d'évaluation et de classification. (2001). *Évaluation des fonctions à l'État de Fribourg*. Fribourg.

Commission de l'équité salariale (Quebec). (2002). *L'Équité salariale un poids une mesure: Rapport du ministre du travail sur la mise en oeuvre de la Loi sur l'équité salariale dans les entreprises de 10 à 49 employés*. Quebec.

———. (2002). *Guide pour réaliser l'équité salariale dans les entreprises de 10 à 49 personnes salariées*. Quebec: 2000.

———. Website: http://www.ces.gouv.qc.ca/fr/english/english.asp.

Commonwealth Secretariat. (1995). *The 1995 Commonwealth Plan of Action on Gender and Development*. Website at http://www.thecommonwealth.org/Templates/STPDHomePage.asp?NodeID=34021.

Cornish, Mary, Elizabeth Shilton, and Fay Faraday. (2002). *Canada's International and Domestic Human Rights Obligations to Ensure Pay Equity: Obligations to Design an Effective, Enforceable and Proactive Federal Pay Equity Law*. Unpublished research paper commissioned by the Pay Equity Task Force.

Cranford, Cynthia J., Leah F. Vosko, and Nancy Zukewich. (2003). "The Gender of Precarious Employment in Canada." *Relations industrielles/Industrial Relations* (RI/IR). Vol. 58, No. 3.

Creese, Gillian. (1999). *Contracting Masculinity: Gender, Class and Race in a White Collar Union, 1944-1994*. Toronto: Oxford.

Currie, Janet and Richard Chaykowski. (1995). "Male Jobs, Female Jobs and Gender Gaps in Benefits Coverage in Canada." In Solomon W. Polachek (Ed.), *Research in Labor Economics*, Vol. 14. Greenwich, Conn. and London: JAI Press.

Davidson-Palmer, Judith. (2002). *Assessing Pay Equity Implementation, Monitoring and Enforcement Models*. Unpublished research paper commissioned by the Pay Equity Task Force.

Déom, E. and J. Mercier. (2001). "L'Équité salariale et les relations du travail : des logiques qui s'affrontent." *Recherches féministes*. Vol. 14, No. 1.

DiGiacomo, Gordon and Paul Carr. (2003). *International Nickel Company Limited: A Case Study in Pay Equity Implementation*. Unpublished research paper commissioned by the Pay Equity Task Force.

Drolet, Marie. (2002). "Can the Workplace Explain Canadian Gender Pay Differentials?" *Canadian Public Policy – Analyse de Politiques*, Vol. 28, Supplement 1, May 2002.

———. (2002). "The male-female wage gap." *Perspectives on Labour and Income*. Spring 2002, Vol. 14, No. 1.

———. (2001). *The Persistent Gap: New Evidence on the Canadian Wage Gap*. Statistics Canada, Analytical Studies Branch, Research Paper Series No. 157.

Durber, Paul. (2002). *Criteria and Unit of Analysis for Sex Predominance and Pay Equity Evaluation*. Unpublished research paper commissioned by the Pay Equity Task Force.

Dussault, Ginette. (1987). *À travail équivalent, salaire égal: La portée de la revendication*. Montréal : Institut de recherche appliquée sur le travail.

Edley, Christopher, Jr. and George Stephanopoulos. (1995). *Affirmative Action Review: Report to the President* [of the United States].

England, Paula. (1992). *Comparable Worth: Theories and Evidence*. New York: Aldine de Gruyter.

Equal Opportunities Commission (EOC). (1997). *Code of Practice on Equal Pay*. Manchester: Equal Opportunity Commission (EOC).

Equal Pay Task Force. (2001). *Just Pay: A Report to the Equal Opportunities Commission*. Manchester: Equal Opportunity Commission (EOC).

Fairbairn, Lyle and Margot Priest. (2002). *Enhancing Compliance with Human Rights Objectives – Policy Options*. Paper prepared for the Canadian Human Rights Act Review Panel.

Femmes regroupées en options non traditionelles (FRONT). (1996). "La formation en entreprises est-elle la voie pour l'équité?" Preparatory documents for the 1996 symposium. Montréal.

Figs, Deborah M. (1995). "Evaluating Pay Equity in Michigan: A Strategic Choice Perspective." *Industrial Relations*. Vol. 34, No. 2, April 1995.

Findlay, Mary Suzanne and Rosemary Warskett. (2003). *Pay Equity for Non-Unionized Workers in Federal Jurisdictions: How to Make It Work?* Unpublished research report commissioned by the Task Force.

Finnie, Ross. (2001). "Employment and earnings of postsecondary graduates." *Perspectives on labour and income*. Autumn 2001. Statistics Canada.

Finnie, Ross and Ted Wannell. (1999). In Richard P. Chaykowski and Lisa M. Powell (Eds.), *Women and Work*. Kingston: McGill-Queen's University Press.

Flanagan, Thomas. (1987). "Equal Pay for Work of Equal Value: An Historical Note." 22 *Journal of Canadian Studies* 5.

Forrest, Anne. (2003). *After the Pay Equity Award: Can Collective Bargaining Maintain Equal Pay for Work of Equal Value?* Unpublished research paper commissioned by the Pay Equity Task Force.

Fortin, Nicole M. and Michael Huberman. (2002). "Occupational Gender Segregation and Women's Wages in Canada: An Historical Perspective.", Vol. 28, Supplement 1, May 2002.

———. (2002). "Occupational Gender Segregation: Public Policies and Economic Forces: Introduction and Overview." *Canadian Public Policy – Analyse de Politiques*, Vol. 28, Supplement 1, May 2002.

Fudge, Judy. (2000). "The Paradoxes of Pay Equity: Reflections on the Law and the Market in Bell Canada and the Public Service Alliance of Canada." 12 *Canadian Journal of Women and the Law.*

———. (1993). "The Gendered Dimension of Labour Law : Why Women Need Inclusive Unionism and Broader-Based Bargaining." In L. Briskin and P. McDermott (Eds.), *Women Challenging Unions: Feminism, Democracy, and Militancy*. Toronto: University of Toronto Press.

Fudge, Judy and Patricia McDermott (Eds.). (1991). *Just Wages: A Feminist Assessment of Pay Equity*. Toronto: University of Toronto Press.

Fudge, Judy, Eric Tucker and Leah Vosko. (2003). *The Legal Concept of Employment: Marginalizing Workers*. Ottawa: Law Commission of Canada.

Genge, Susan. (1994). *Pay Equity in Canada: What Works? Trade Union Pay Equity Practitioners Examine Their Experiences*. Report prepared for Human Resources Development Canada and the Canadian Labour Congress Ad Hoc Pay Equity Committee.

Government of Canada. (2002). *Knowledge Matters: Skills and Learning for Canadians.*

Gunderson, Morley. (2002). "The Evolution and Mechanics of Pay Equity in Ontario." *Canadian Public Policy – Analyse de Politiques*, Vol. 28, May 2002, Supplement 1.

———. (1998). *Women and the Canadian Labour Market: Transitions towards the Future.* Toronto: Statistics Canada and Nelson Publishing.

———. (1994). *Comparable worth and gender discrimination: An international perspective*. Geneva: International Labour Office.

Hallé, G. (1999). *Définition de la rémunération*. Confédération des syndicats nationaux (CSN). Note de recherche.

Harriman, Anita and Carin Holm (Swedish Equal Opportunities Ombudsman). (2001). *Steps to Pay Equity: An easy and quick method for the evaluation of work demands.* Lönelots/Jam.

Hastings, Sue. (2001). *Developing a Less Discriminatory Job Evaluation Scheme. A Case Study: The Local Government (NJC) Job Evaluation Scheme.* Paper presented at the International Conference on Equal Pay. Berlin.

Hum, Derek and Wayne Simpson. (1999). "Wage Opportunities for Visible Minorities in Canada." *Canadian Public Policy – Analyse de Politiques.* 25(3), September 1999.

Human Resources Development Canada (HRDC). (2003). *Annual Report: Employment Equity Act 2002.*

———. (2001). Annual Report *Employment Equity Act* 2001.

Institut de recherche et d'information sur la remuneration (IRIR). (1989). *Les principes de l'équité salariale et les approches dans le secteur public québécois.* Montreal.

Institute for Social Research. (1994). *Pay equity survey of private sector organizations employing 10-49 employees in Ontario.* Toronto: York University.

International Labour Office. (1986). *Job Evaluation.* Geneva.

International Labour Organization (ILO). (1997.) "ILO Highlights Global Challenges to Trade Unions." ILO press release, November 4, 1997.

Iyer, Nitya. (2002). *Working Through the Wage Gap: Report of the Task Force on Pay Equity.* (Report commissioned by the Attorney General of British Columbia).

Jackson, Andrew. (2002). *Is Work Working for Workers of Colour?* Canadian Labour Congress. Research paper #18.

Kainer, Jan and Patricia McDermott. (2003). *Defining the Scope of Implementation of Pay Equity within Federally-Regulated Workplaces: Defining "Establishment".* Unpublished research paper commissioned by the Pay Equity Task Force.

Kervin, John. (2002). *Measures of Job Gender.* Unpublished research paper commissioned by the Pay Equity Task Force.

———. (2002). *Pay Equity in Small Establishments.* Unpublished research paper commissioned by the Pay Equity Task Force.

———. (2002). *Wage Adjustment Methodologies.* Unpublished research paper commissioned by the Pay Equity Task Force.

Kessler-Harris, Alice. (1990). *A Woman's Wage: Historical Meanings and Social Consequences.* Lexington, Ky.: University Press of Kentucky.

Lawrence, Gail E. (2003). *Models and Best Practices for Pay Equity Maintenance.* Unpublished research paper commissioned by the Pay Equity Task Force.

Li, Peter S. (2001). "The Market Worth of Immigrants' Educational Credentials." *Canadian Public Policy – Analyse de Politiques,* 27(1).

Lipsett, Brenda and Mark Reesor. (1999). "Women and Men's Entitlement to Workplace Benefits: The Influence of Work Arrangements." In R.P. Chaykowski and Lisa M. Powell (Eds.), *Women and Work.* Kingston: McGill-Queen's University Press.

———. (1997). *Employer-sponsored Pension Plans – Who Benefits?* Ottawa: Human Resources Development Canada, Applied Research Branch, Strategic Policy.

Manitoba Civil Service Commission. (1998). *Pay Equity in the Manitoba Civil Service.* Winnipeg.

Marshall, Katherine. (1999). "Employment after childbirth, 1993/94." *Perspectives on labour and income.* Autumn 1999. Statistics Canada.

McDonald, J.A. and R.J. Thornton. (1998). "Private-Sector Experience with Pay Equity in Ontario." *Canadian Public Policy-Analyse de politiques.* Vol. 24, No. 2.

Messing, Karen. (1998). *One-Eyed Science: Occupational Health and Women Workers,* Philadelphia: Temple University Press.

Murray, Gregor and Pierre Verge. (1999). *La représentation syndicale : Visage juridique actuel et future.* Quebec City : Les Presses de l'Université Laval.

National Committee on Pay Equity. (1993). *Erase the Bias. A Pay Equity Guide to Eliminating Race and Sex Bias from Wage Setting Systems.* Washington.

———. (1987). *Pay Equity: An Issue of Race, Ethnicity and Sex.* Washington.

Newman, Christina. (1969). "What's so funny about the Royal Commission on the Status of Women?" *Saturday Night.* January 1969.

Nova Scotia Pay Equity Commission. *Annual Report for the fiscal year ending March 31, 1999.* Available online at http://www.gov.ns.ca/enla/pubs/payeq99.pdf.

Ontario's Pay Equity Commission. *Guideline No. 7. Determining the Gender Predominance of Job Classes.* Available online at http://www.gov.on.ca/lab/pec/peo/english/guidelines/ge_7.html.

———. *Guideline No. 11. Determining Job Rate.* Available online at http://www.gov.on.ca/LAB/pec/peo/english/pubs_guidelines.html.

———. *Pay Equity: The Proxy Comparison Method.* [Online resource]. Available online at http://www.gov.on.ca/LAB/pec/peo/english/index.html.

———. *The Space Toy Co. Pay Equity Plan – Toronto.* Available online at http://www.gov.on.ca/lab/pec/peo/english/casestudy/jj_peplan.html.

———. Website: http://www.gov.on.ca/lab/pec/.

Ordre des conseillers en ressources humaines et en relations industrielles agréés du Québec et CROP. (2001). *État des travaux sur l'équité salariale au Québec : Rapport final pour l'Ordre des conseillers en ressources humaines et en relations industrielles agréés du Québec.* Available online at http://www.portail-hri.com/telechargement/section_actualites/2001/septembre/equite_salariale.pdf.asp.

Organization for Economic Co-operation and Development (OECD). (1998). *The Future of Female-dominated Occupations.* (ISBN 92-64-16149-X (81 98 10 1) Print). Copyright © OECD, 1998.

Paquet, Renaud and Jacques-André Lequin. (2003). *Interrelations between Labour Relations Processes and Pay Equity: The Specific Case of the Public Service.* Unpublished research paper commissioned by the Pay Equity Task Force.

Pay Equity Bureau. (Undated). *Interpretation and Wage Adjustments*. Manitoba Labour. Winnipeg.

"Pay Equity Flash: Prince Edward Island." (1995). 4 *CCH Focus on Canadian Employment and Equality Rights* 49.

Pendakur, Krishna and Ravi Pendakur. (2002). "Colour My World: Have Earnings Gaps for Canadian-Born Ethnic Minorities Changed over Time?" *Canadian Public Policy – Analyse de Politiques*, 28(4).

Pfeffer, Jeffrey and Alison Davis-Blake. (1987). "The Effect of the Proportion of Women on Salaries: The Case of College Administrators." *Administrative Science Quarterly*. Vol. 32.

Priest, Margot. (2002). *Options for Pay Equity Oversight*. Unpublished research paper commissioned by the Pay Equity Task Force.

Public Service Commission of Canada (PSC). Unit 3 of *Employment Equity Career Counselling Study Guide*. Available online at http://www.psc-cfp.gc.ca/centres/employment_equity/eecco/unit3_e.htm.

Quaid, Maeve. (1993). *Job Evaluation: The Myth of Equitable Assessment* (2nd ed.). Toronto: University of Toronto Press.

Ranftl, Edeltraud. (2001). *Non-discriminatory Job Evaluation – Application of the NJC System within an Action Research Project in Austria*. Paper presented to the International Conference on Equal Pay – Models and Initiatives on Equal Pay, Berlin.

Read, Jean M. (1996). *Review of the Pay Equity Act*. Toronto: Government of Ontario.

Reed, Rosselyn. (1995). "From Librarian to Information Scientist: Technology and Occupational Change in a Traditional Woman's Occupation." Published electronically by Women in Global Science and Technology Network (WIGSAT) at http://www.wigsat.org/.

Saint-Laurent, France. (2002). *Research into the Obligation to Maintain Pay Equity*. Unpublished paper commissioned by the Pay Equity Task Force.

Saskatchewan Human Rights Commission. (1996). *Renewing the Vision: Human Rights in Saskatchewan*.

Saskatchewan. (1999). *Equal Pay for Work of Equal Value and Pay Equity Policy Framework*.

Savage, S. (1990). *How to Maintain Pay Equity after Your Plan Has Been Posted. Pay Equity Guide*. Vol. 3, No. 6, June 1990.

Scottish Executive, *Learning From Experience: Lessons in Mainstreaming Equal Opportunities*. Available online at http://www.scotland.gov.uk/library5/social/lfel-00.asp.

Sims, Andrew (Chair). (1995). *Seeking a Balance: Review of the Canada Labour Code, Part 1*. Ottawa: Public Works and Government Services Canada, 1995.

Simms, Margaret C. (Ed.). (1995). Introduction, in *Economic Perspectives on Affirmative Action*. Washington, D.C.: Joint Centre for Political and Economic Studies.

SPR Associates Incorporated/National Mail Surveys Incorporated. (1991). *An Evaluation of Pay Equity in Ontario: The First Year*. Toronto: Canada.

Statistics Canada. (2003). *Canada's ethnocultural portrait: The changing mosaic. 2001 Census*. (Analysis series.)

———. (2003). *Education in Canada: Raising the Standard. 2001 Census* (Analysis series).

———. "Fact-sheet on unionization." *Perspectives on Labour and Income*. Vol. 4, No. 8, August 2003.

———. (2001, 2002, 2003). *Women in Canada: Work Chapter Updates.*

———. (2001). *A Profile of Disability in Canada, 2001.*

———. *2001 Census of Population.*

———. (2000). *Women in Canada 2000: A gender-based statistical report.*

———. *1996 Census of Population.*

———. *The Daily*. (2003). Catalogue Number 11-001-XIE. January 21, February 11 and March 11, 2003.

Status of Women Canada (SWC). (1998). *Gender-Based Analysis: A Guide for Policy-Making*. Ottawa.

———. (1995). *Setting the Stage for the Next Century: The Federal Plan for Gender Equality*. Ottawa.

Steinberg, Ronnie and L. Haignere. (1985). *Equitable Compensation: Methodological Criteria for Comparable Worth*. Albany: Center for Women in Government, State University of New York.

Steinberg, Ronnie. (1990). "The Social Construction of Skill." *Work and Occupations*. 17(4).

Swidinsky, Robert and Michael Swidinsky. (2002). "The Relative Earnings of Visible Minorities in Canada: New Evidence from the 1966 Census." *Relations industrielles/Industrial Relations*. 57(4).

Tennant, Ariane. (2002). *Pay Equity in Europe: A Comparative Study of European Union and Selected National Approaches*. Unpublished research paper commissioned by the Pay Equity Task Force.

Thériault, Roland, and Sylvie St-Onge. (2000). *Gestion de la rémunération : Théorie et pratique*. Montreal: Gaëtan Morin.

Townson, Monica. (2002). *The Implications of Non-Standard Forms of Work for the Application of Federal Pay Equity Provisions*. Unpublished research paper commissioned by the Pay Equity Task Force.

———. (2002). *The Treatment of Non Wage Benefits in Pay Equity Comparisons*. Unpublished research paper commissioned by the Pay Equity Task Force.

Treasury Board of Canada Secretariat. Public Service Modernization Act – *Overview and Highlights*, February 2003. Available online at http://www.tbs-sct.gc.ca/mhrm-mgrh/ovhi-apps_e.asp.

———. (2003). *Annual Report to Parliament: Employment Equity in the Federal Public Service 2001-02.* Ottawa.

Treimann, D.J. and H.I. Hartmann. (1981). *Women, Work and Wages: Equal Pay for Work of Equal Value.* Washington: National Academic Press.

Weiler, Paul. (1980). *Reconcilable Differences: New Directions in Canadian Labour Law.* Chapter 1. Toronto: Carswell.

Weiner, Nan. (2002). "Effective Redress of Pay Inequities." *Canadian Public Policy – Analyse de Politiques,* Vol. 28, Supplement 1,May 2002.

———. (1991). "Job Evaluation Systems: A Critique." *Human Resource Management Review.* Vol. 1, No. 2.

Weiner, Nan and Morley Gunderson. (1990). *Pay Equity: Issues, Options and Experiences.* Butterworths.

Winter, Nadine. (2003). *Treatment of Cash Compensation in Pay Equity Comparisons.* Unpublished research paper commissioned by the Pay Equity Task Force.

Wright, Ruth in partnership with the Ministry of Citizenship, Government of Ontario. (2001). *Tapping the Talents of People with Disabilities.* The Conference Board of Canada.

Young, Margot. (2002). *Pay Equity: A Fundamental Human Right.* Status of Women Canada.

International Conventions

Canada. (2002). *Convention on the Elimination of All Forms of Discrimination Against Women: Fifth Report of Canada Covering the Period April 1994-March 1998.* Ottawa: Public Works and Government Services Canada.

Council of the European Union. (2003). 2003/578/EC: Council Decision of 22 July 2003 on guidelines for the employment policies of the Member States. *Official Journal of the European Union L 197,* Vol. 46, 5 August 2003. Available online at http://europa.eu.int/eur-lex/en/archive/2003/l_19720030805en.html.

International Labour Organization (ILO). (2003). International Labour Conference, 91st Session. *Time for Equality at Work: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work.* Report I (B). Geneva: International Labour Office.

———. ILO Committee of Experts on the Application of Conventions and Resolutions. (2002). *Individual Observation Concerning Convention No. 100,* 1951. Mexico.

———. General Conference. (1951). *Convention No. 100, the Convention Concerning Equal Remuneration for Men and Women for Work of Equal Value.* 34th Session (1951). Geneva.

United Nations Committee on Economic, Social and Cultural Rights. (1999). *Report to the Eighteenth and Nineteenth Sessions*. Economic and Social Council Official Records, 1999, Supplement No. 2. 426. E/1999/22, E/C.12/1998/26. 4 December 1998. New York and Geneva: United Nations.

United Nations Fourth World Conference on Women. *Report of the Fourth World Conference on Women*. (1995). Chap. I, Resolution 1, Annex I *(Beijing Declaration)* and Annex II *(Beijing Platform for Action)*. Beijing: United Nations Publications, Sales No. E.96.IV.13. 4-15 September 1995.

United Nations. (2000). *Further actions and initiatives to implement the Beijing Declaration and Platform for Action*. GA Res. S-23/3, UN GAOR, 23rd Special Sess. UN Doc. A/RES/S-23/3.

———. (1979). *Convention on the Elimination of All Forms of Discrimination against Women*. G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46.

———. (1966). *International Covenant on Civil and Political Rights*. G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, 16 December 1966, ratified by Canada in 1976.

———. (1966). *International Covenant on Economic, Social and Cultural Rights*. G.A. res. 2200A (XXI), 21 U.N.GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3.

———. (1948). *Universal Declaration of Human Rights*. G.A. Res. 217 (III), UN GAOR, 3d Sess., Supp. No. 13, U.N. Doc. A/810 at 71 (1948).

Case Law

114957 Canada Ltée (Spraytech, Société d'arrosage) v. *Hudson (Town)*, [2001] 2 S.C.R. 241.

Attorney General of Canada v. *Public Service Alliance of Canada and Canadian Human Rights Commission* (1999), 180 D.L.R. (4th) 95 (F.C.T.D.).

Baker v. *Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817.

Bell Canada v. *Canadian Telephone Employees Association*, [1998] 3 F.C. 244, (F.C.T.D.).

Bell Canada v. *Canadian Telephone Employees Association*, [2000] F.C.J. No. 947.

Bell Canada v. *Canadian Telephone Employees Association*, [2003] SCJ No. 36; 2003 SCC 36; Court File No. 28743.

BICC Phillips (1997), 8 P.E.R. 142.

British Columbia [Public Service Employee Relations Commission] v. *British Columbia Government and Service Employees Union (B.C.G.S.E.U.)* (Meiorin case), [1999] 3 S.C.R. 3, File No. 26274.

Canada (Attorney General) v. *Public Service Alliance of Canada*, [2000] 1 F.C. 146, (F.C.T.D.).

Canada (Attorney General) v. *Thwaites*, [1994] 2 F.C. 38, (F.C.T.D.).

Canada (House of Commons) v. *Vaid*, [2002] 2 F.C. 583, (F.C.T.D.).

Canada (House of Commons) v. *Vaid*, [2003] 1 F.C. 602, 2002 FCA 473.

Canada Safeway v. *Saskatchewan Human Rights Commission* (1999), 178 Sask. R. 296 (Sask. Q.B.)

Canadian Union of Public Employees (Airline Division) v. Canadian Airlines International Ltd., T.D. 9/98 (Canadian Human Rights Tribunal).

Central Okanagan School District No. 23 v. *Renaud*, [1992] 2 S.C.R. 970.

Commission des droits de la personne et des droits de la jeunesse Québec, C.D.P.D J. Rhéaume c. *Université Laval*, (2002-08-02), QCTDP 200-53-000013-92.

Commission des droits de la personne et des droits de la jeunesse v. *Université Laval*. Tribunal des droits de la personne du Québec. August 20, 2000.

Cooper v. *Canada (Human Rights Commission)*, [1996] 3 S.C.R. 854.

Essex (1996), 7 P.E.R. 83.

Haldimand-Norfolk (No. 6) (1991), 2 P.E.R. 105.

Insurance Corporation of British Columbia and Canadian Union of Public Employees, [1974] 1 Can. L.R.B.R. 403

Insurance Corporation of British Columbia v. *Heerspink* [1982] 2 S.C.R. 145.

Janzen v. *Platy Enterprises Ltd.*, [1989] 1 S.C.R. 1252.

K.H. v. *Communications, Energy and Paperworkers Union and SaskTel* [1997], Sask. L.R.B.D. 476.

Lady Dunn General Hospital (1991), 2 P.E.R. 168.

Law Society (No. 2) (1998-99), 9 P.E.R. 35.

Maclean's Magazine (No. 1) (1993), 4 P.E.R. 16.

Manitoba Council of Health Care Unions v. *Bethesda Hospital* (1992), 88 D.L.R. (4th) 60 (Man. Q.B.).

Melitta Canada Inc. (No. 2), (1995), 6 P.E.R. 214.

National Bank of Canada v. *Retail Clerks International Union*, [1984] 1 S.C.R. 269.

Newfoundland (Treasury Board) v. *NAPE*, [1998] N.J. No. 96 (S.C.).

Nishimara v. *Ontario (Human Rights Commission)* (1989), 70 O.R. (2d) 347 (Div. Ct.).

Ocean Port Hotel v. *British Columbia (General Manager, Liquor Control and Licensing Branch)*, [2001] 2 S.C.R. 781.

Ongwanada (2001-02), 12 P.E.R. 1.

Ontario Nurses' Association v. *Women's College Hospital* (1992), 3 P.E.R. 61.

Public Service Alliance of Canada and Treasury Board (1996) T.D. 2/96 and (1998) T.D. 7/98.

Public Service Alliance of Canada v. *Department of National Defence (Non-Public Funds)*, [1996] 3 F.C. 789 (F.C.A.).

R. v. *Sharpe*, [2001] 1 S.C.R. 45.

Re Wentworth County Board of Education (1991), 2 P.E.R. 37.

Robichaud v. *Canada (Treasury Board)*, [1987] 2 S.C.R. 84.

Service Employees International Union (SEIU), Local 204 v. *Attorney General of Ontario* (1997), 35 O.R. (3d) 508.

Steele v. *Louisville & Nashville Railroad Co.*, 323 U.S. 192 (1944).

Stevenson Memorial Hospital (1999-2000), 10 P.E.R. 60.

United Food and Commercial Workers, Local 401 v. *Alberta Human Rights and Citizenship Commission*, 2003 ABCA 246.

Weber v. *Ontario Hydro*, [1995] 2 S.C.R. 929.

Welland County General Hospital (No. 2) (1994), 5 P.E.R. 12.

Winnipeg School Division No. 1 v. *Craton*, [1985] 2 S.C.R. 150.

Statutes

Alberta. *Human Rights, Citizenship and Multiculturalism Act*. R.S.A. 1980, c. H-11.7.

———. *Human Rights, Citizenship and Multiculturalism Act*, R.S.A. 2000, c. H-14.

British Columbia. *Equal Pay Act*. R.S.B.C. 1960, c. 131.

———. *Human Rights Code Amendment Act*. S.B.C. 2001, c. 15.

———. *Labour Relations Code*. R.S.B.C. 1996, c. 244.

Canada. *Employment Equity Act*, S.C. 1995, c. 44.

———. *Act to amend the Canada Evidence Act, Criminal Code and Canadian Human Rights Act*, (Bill S-5) [S.C. 1998, c. 9].

———. *Act to Promote Equal Pay for Female Employees* (1956), 4-5 Elizabeth II, Chapter 38.

———. *Canada Labour Code*, R.S. 1985, c. L-2 .

———. *Canada Labour Code*. R.S.C. 1970, c.17 (2nd Supp.).

———. *Canadian Human Rights Act*, R.S. 1985, c. H-6.

———. *Canadian Human Rights Act*. S.C. 1976-77 c. 33.

———. *Equal Wages Guidelines, 1986*, SOR/86-1082.

———. *Official Languages Act*. R.S.C. 1985, c. 31.

———. *Public Service Staff Relations Act*. R.S.C. 1985, c. P-35.

———. *Status of the Artist Act*. S.C. 1992, c. 33.

Manitoba. *Pay Equity Act*. S.M. 1985-86, c. 21, C.C.S.M., c. P13.

New Brunswick. *Pay Equity Act*, R.S.N.B. 1989, c. P-5.01.

Newfoundland. *Public Sector Restraint Act*, 1992, S.N.L. 1992, c. P-41.1.

———. *Public Sector Restraint Act*, S.N. 1991, c. 3.

Nova Scotia. *Pay Equity Act*, R.S.N.S. 1989, c. 337.

Ontario. *Employment Standards Act*. S.O. 2000, c. 41.

———. *Fair Employment Practices Act*. R.S.O. 1960, c. 132.

———. *Hospital Labour Disputes Arbitration Act*. R.S.O. 1990, c. H.14.

———. *Human Rights Code*, R.S.O. 1961-62, c. 93.

———. *Human Rights Code*, R.S.O. 1990, c. H.19.

———. *Labour Relations Act*, S.O. 1995, c. 1.

———. *Ontario Regulation 491/93*.

———. *Pay Equity Act*. R.S.O. 1990, c. P.7.

Prince Edward Island. *An Act to Amend the Pay Equity Act*, S.P.E.I. 1995, c. 28.

———. *Pay Equity Act*. R.S.P.E.I. 1988, c. P-2.

Quebec. *Charter of Human Rights and Freedoms*. S.Q. 1975, c. C-12.

———. *Pay Equity Act*, R.S.Q. 1995, c. E-12.001.

Saskatchewan. *Equal Pay Act*, R.S.S. 1953, c. 294.

———. *Labour Standards Act*. R.S.S. 1978, c. L-1.

———. *Saskatchewan Bill of Rights Act*, S.S. 1947.

———. *Trade Union Act*, R.S.S. 1978, c. T-17.

Yukon. *Human Rights Act*. S.Y. 1987, c. 3.